

A-Engrossed
Senate Bill 437

Ordered by the Senate March 3
Including Senate Amendments dated March 3

Sponsored by Senator HAYDEN; Senators SMITH DB, SOLLMAN (Presession 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.

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

A BILL FOR AN ACT

1
2 Relating to producing food in planned communities; amending ORS 94.779.

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

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

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

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

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

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

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

18 94.779. (1) A provision of a planned community's governing document or landscaping or archi-
19 tectural guidelines that imposes irrigation requirements on an owner or the association is void and
20 unenforceable while any of the following is in effect:

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

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

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

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

29 (2) Notwithstanding any provision of a planned community's governing documents or landscaping

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 or architectural guidelines imposing irrigation requirements on an owner or the association, an as-
2 sociation may adopt rules that:

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

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

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

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

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

18 [(3)] (4) Except as provided in subsections [(4) and] (5) and (6) of this section, if adopted on or
19 after January 1, 2018, the following provisions of a planned community's governing document are
20 void and unenforceable:

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

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

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

30 (a) Is reasonable; and

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

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

36 (b) As used in this subsection, "housing for older persons" has the meaning given that term in
37 ORS 659A.421.

38 [(6)] (7) A provision in a planned community's governing document that restricts or prohibits the
39 installation or use of a portable cooling device, as defined in section 2 (1), chapter 86, Oregon Laws
40 2022, is void and unenforceable, unless:

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

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

43 (B) Violate the device manufacturer's written safety guidelines for the device; or

44 (b) The restrictions are only to require that the device be removed from October 1 through April

45 30.

