

SENATE BILL 62

N1, L6

7lr0833

(PRE-FILED)

By: **Senator Young**

Requested: October 11, 2016

Introduced and read first time: January 11, 2017

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Backyard Gardens – Prohibition on Restrictions**

3 FOR the purpose of prohibiting certain documents from prohibiting a certain homeowner
4 or tenant from installing or cultivating a backyard garden; establishing that,
5 notwithstanding certain documents, a certain homeowner or tenant may not be
6 prohibited from installing or cultivating a backyard garden; providing that a local
7 jurisdiction may not prohibit installation or cultivation of a backyard garden on
8 certain property; applying the prohibition to charter counties and Baltimore City;
9 defining certain terms; and generally relating to the installation and cultivation of
10 backyard gardens.

11 BY repealing and reenacting, with amendments,
12 Article – Land Use
13 Section 1–401(b) and 10–103(b)
14 Annotated Code of Maryland
15 (2012 Volume and 2016 Supplement)

16 BY adding to
17 Article – Land Use
18 Section 4–104(c)
19 Annotated Code of Maryland
20 (2012 Volume and 2016 Supplement)

21 BY adding to
22 Article – Real Property
23 Section 14–133
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Land Use

1–401.

(b) The following provisions of this division apply to a charter county:

(1) this subtitle, including Parts II and III (Charter county
– Comprehensive plans);

(2) § 1–101(l), (m), and (o) (Definitions – “Plan”, “Priority funding area”,
and “Sensitive area”);

(3) § 1–201 (Visions);

(4) § 1–206 (Required education);

(5) § 1–207 (Annual report – In general);

(6) § 1–208 (Annual report – Measures and indicators);

(7) Title 1, Subtitle 3 (Consistency);

(8) Title 1, Subtitle 5 (Growth Tiers);

(9) § 4–104(b) (Limitations – Bicycle parking);

(10) § 4–104(c) (LIMITATIONS – BACKYARD GARDENS);

[(10)] (11) § 4–208 (Exceptions – Maryland Accessibility Code);

[(11)] (12) § 4–210 (Permits and variances – Solar panels);

[(12)] (13) § 5–102(d) (Subdivision regulations – Burial sites);

[(13)] (14) § 5–104 (Major subdivision – Review);

[(14)] (15) Title 7, Subtitle 1 (Development Mechanisms);

[(15)] (16) Title 7, Subtitle 2 (Transfer of Development Rights);

**[(16)] (17) except in Montgomery County or Prince George’s County, Title
7, Subtitle 3 (Development Rights and Responsibilities Agreements);**

1 [(17)] **(18)** Title 7, Subtitle 4 (Inclusionary Zoning);

2 [(18)] **(19)** § 8–401 (Conversion of overhead facilities);

3 [(19)] **(20)** for Baltimore County only, Title 9, Subtitle 3 (Single–County
4 Provisions – Baltimore County);

5 [(20)] **(21)** for Howard County only, Title 9, Subtitle 13 (Single–County
6 Provisions – Howard County);

7 [(21)] **(22)** for Talbot County only, Title 9, Subtitle 18 (Single–County
8 Provisions – Talbot County); and

9 [(22)] **(23)** Title 11, Subtitle 2 (Civil Penalty).

10 4–104.

11 **(C) (1) IN THIS SUBSECTION, “BACKYARD”, “GARDEN”, AND**
12 **“SINGLE–FAMILY PROPERTY” HAVE THE MEANINGS STATED IN § 14–133 OF THE**
13 **REAL PROPERTY ARTICLE.**

14 **(2) A LOCAL JURISDICTION MAY NOT PROHIBIT OR LIMIT THE**
15 **INSTALLATION OR CULTIVATION OF A BACKYARD GARDEN ON SINGLE–FAMILY**
16 **PROPERTY.**

17 10–103.

18 (b) The following provisions of this division apply to Baltimore City:

19 (1) this title;

20 (2) § 1–101(m) (Definitions – “Priority funding area”);

21 (3) § 1–101(o) (Definitions – “Sensitive area”);

22 (4) § 1–201 (Visions);

23 (5) § 1–206 (Required education);

24 (6) § 1–207 (Annual report – In general);

25 (7) § 1–208 (Annual report – Measures and indicators);

26 (8) Title 1, Subtitle 3 (Consistency);

(9) Title 1, Subtitle 4, Parts II and III (Home Rule Counties – Comprehensive Plans; Implementation);

(10) § 4–104(b) (Limitations – Bicycle parking);

(11) § 4–104(C) (LIMITATIONS – BACKYARD GARDENS);

[(11)] (12) § 4–205 (Administrative adjustments);

[(12)] (13) § 4–207 (Exceptions – Maryland Accessibility Code);

[(13)] (14) § 4–210 (Permits and variances – Solar panels);

[(14)] (15) § 5–201(d) (Subdivision regulations – Burial sites);

[(15)] (16) Title 7, Subtitle 1 (Development Mechanisms);

[(16)] (17) Title 7, Subtitle 2 (Transfer of Development Rights);

[(17)] (18) Title 7, Subtitle 3 (Development Rights and Responsibilities Agreements);

[(18)] (19) Title 7, Subtitle 4 (Inclusionary Zoning); and

[(19)] (20) Title 11, Subtitle 2 (Civil Penalty).

Article – Real Property

14–133.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “BACKYARD” MEANS THE PORTION OF A SINGLE-FAMILY PROPERTY EXTENDING FROM THE REAR OF THE DWELLING UNIT TO THE END OF THE PLOT.

(3) (I) “GARDEN” MEANS AN AREA IN WHICH VEGETABLES, FRUIT, OR HERBS ARE CULTIVATED AND GROWN.

(II) “GARDEN” INCLUDES:

1. TILLED SOIL, RAISED BEDS RISING NO MORE THAN 12 INCHES ABOVE THE GROUND, AND FREE-STANDING POTTED SOIL; AND

1 2. THE PRODUCE GROWN AND CULTIVATED IN THE SOIL.

2 (4) (I) “SINGLE-FAMILY PROPERTY” INCLUDES:

3 1. A SINGLE-FAMILY DETACHED HOME;

4 2. A TOWNHOUSE; AND

5 3. A PROPERTY THAT IS SUBJECT TO:

6 A. TITLE 11 OF THIS ARTICLE;

7 B. TITLE 11B OF THIS ARTICLE; OR

8 C. TITLE 5, SUBTITLE 6B OF THE CORPORATIONS AND
9 ASSOCIATIONS ARTICLE.

10 (II) “SINGLE-FAMILY PROPERTY” DOES NOT INCLUDE
11 PROPERTY THAT CONTAINS MORE THAN FOUR DWELLING UNITS.

12 (5) “TOWNHOUSE” MEANS A SINGLE-FAMILY DWELLING UNIT THAT IS
13 CONSTRUCTED IN A HORIZONTAL SERIES OF ATTACHED UNITS WITH PROPERTY
14 LINES SEPARATING THE UNITS.

15 (B) A CONTRACT, A DEED, A COVENANT, A RESTRICTION, AN INSTRUMENT,
16 A DECLARATION, A RULE, A BYLAW, A LEASE AGREEMENT, A RENTAL AGREEMENT,
17 OR ANY OTHER DOCUMENT MAY NOT PROHIBIT A HOMEOWNER OR TENANT FROM
18 INSTALLING OR CULTIVATING A BACKYARD GARDEN ON SINGLE-FAMILY PROPERTY.

19 (C) NOTWITHSTANDING ANY OTHER LAW OR THE TERMS OF ANY CONTRACT,
20 DEED, COVENANT, RESTRICTION, INSTRUMENT, DECLARATION, RULE, BYLAW,
21 LEASE AGREEMENT, RENTAL AGREEMENT, OR ANY OTHER DOCUMENT CONCERNING
22 THE INSTALLATION OR USE OF A BACKYARD GARDEN ON SINGLE-FAMILY
23 PROPERTY, A HOMEOWNER OR TENANT MAY NOT BE PROHIBITED FROM INSTALLING
24 OR CULTIVATING A BACKYARD GARDEN ON SINGLE-FAMILY PROPERTY.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2017.