

# 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);

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

3 (10) § 4–104(b) (Limitations – Bicycle parking);

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

5 ~~[(11)]~~ **(12)** § 4–205 (Administrative adjustments);

6 ~~[(12)]~~ **(13)** § 4–207 (Exceptions – Maryland Accessibility Code);

7 ~~[(13)]~~ **(14)** § 4–210 (Permits and variances – Solar panels);

8 ~~[(14)]~~ **(15)** § 5–201(d) (Subdivision regulations – Burial sites);

9 ~~[(15)]~~ **(16)** Title 7, Subtitle 1 (Development Mechanisms);

10 ~~[(16)]~~ **(17)** Title 7, Subtitle 2 (Transfer of Development Rights);

11 ~~[(17)]~~ **(18)** Title 7, Subtitle 3 (Development Rights and Responsibilities  
12 Agreements);

13 ~~[(18)]~~ **(19)** Title 7, Subtitle 4 (Inclusionary Zoning); and

14 ~~[(19)]~~ **(20)** Title 11, Subtitle 2 (Civil Penalty).

#### 15 **Article – Real Property**

16 **14–133.**

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

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

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

24 **(II) “GARDEN” INCLUDES:**

25 **1. TILLED SOIL, RAISED BEDS RISING NO MORE THAN 12**  
26 **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.**