



## Senate Bill 62

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

MACo Position: **OPPOSE**

To: Education, Health, and Environmental Affairs  
Committee

Date: January 24, 2017

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **OPPOSES** SB 62. The bill would infringe on local land use authority and contains vague and overbroad provisions.

SB 62 would restrict a local government or homeowner association from prohibiting or limiting the installation or cultivation of a backyard garden on single-family property or townhouse by an owner or tenant. “Backyard” is broadly defined to mean the portion of a single-family property extending from the rear of the dwelling unit to the end of the plot. The bill also applies to any contract, deed, covenant, rental agreement, or any other legal contract.

First, MACo is opposed to the bill as it infringes on the ability of a local government to set reasonable requirements or restrictions on backyard gardens. While such gardens can bring many benefits, they can also potentially generate erosion, runoff, aesthetic, and vermin issues. The State has delegated land use authority to local governments and there is no compelling reason why the State should adopt a “one size fits all” approach to an issue that is extremely local in scope.

Second, the bill’s terms and definitions are vague and would need significant clarification. Several examples: (1) the definition of “backyard” has no size limit and could lead to “gardens” that have more in common with agricultural fields than what most people visualize as a backyard garden; (2) under the bill’s provisions, a landlord could not stop a tenant from digging up a rental unit’s backyard to establish a garden and potentially leave the landlord with costly restoration at the end of the lease; and (3) the bill’s abrogation of any existing contractual restriction on establishing a backyard garden may be unconstitutional.

SB 62 would needlessly usurp local land use authority and contains both vague and overbroad provisions. Accordingly, MACo urges the Committee to give SB 62 an **UNFAVORABLE** report.