

BILL ANALYSIS

C.S.H.B. 1686
By: Cortez
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A growing number of Texans have shown an interest in raising food for themselves, for the health of their families, and for the pleasure of gardening or raising animals. Growing a home garden and raising animals has been shown to have a number of benefits, including increased access to high-quality and nutritious food, a reduction in family food bills, and physical and mental well-being. Unfortunately, some municipalities and property owners' associations restrict Texans from raising their own food.

The COVID-19 pandemic has given new urgency to this issue as our dominant food production and distribution industry has proven to be both fragile and subject to disruption in a crisis. Grocery store shelves went empty as the industry was unable to quickly adapt to new distribution needs. Food prices spiked due to increased demand and limited availability. Food bank lines have been long and unemployment rates remain high, hampering some Texans' ability to provide for their families. C.S.H.B. 1686 seeks to prevent municipalities and property owners' associations from prohibiting cottage food production, the growing of fruits and vegetables, or the raising or keeping of a certain number of domestic fowls and adult rabbits while still providing for reasonable regulations and requirements.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1686 amends the Local Government Code and Property Code to prohibit a municipality and a property owners' association, respectively and except as provided by the bill, from adopting or enforcing an ordinance or restrictive covenant that prohibits any of the following activities on a single-family residential lot:

- the growing of fruits and vegetables;
- the raising or keeping of the following:
 - six or fewer domestic fowls; or
 - six or fewer adult rabbits; or
- applicable only to a property owners' association, a cottage food production operation.

C.S.H.B. 1686 authorizes a municipality to impose reasonable regulations, and a property owners' association to adopt and enforce a restrictive covenant imposing reasonable requirements, on the growing of fruits and vegetables on a single-family residential lot that do

not have the effect of prohibiting the growing of the fruits or vegetables in the front, side, or rear yard of a residence, including a requirement that the growing area be maintained in good condition if visible from the street faced by the lot or from an adjoining lot.

C.S.H.B. 1686 authorizes a municipality to impose reasonable regulations, and a property owners' association to adopt and enforce a restrictive covenant imposing reasonable requirements, on the raising or keeping of fowls or rabbits on a single-family residential lot to control odor, noise, safety, or sanitary conditions that do not have the effect of prohibiting the raising or keeping of the fowls or rabbits, including the following:

- a limit on the number of fowls or rabbits that is more than:
 - the minimum number allowed by the bill; or
 - a total combined number of eight fowls and rabbits, subject to the bill's limits for each type of animal;
- a prohibition on raising or keeping of a rooster;
- the minimum distance between an animal shelter and a residential structure other than the animal owner's own residence;
- a requirement for fencing or shelter sufficient to contain the fowls or rabbits on the owner's property;
- minimum requirements for combined housing and outdoor space of at least 20 square feet per fowl and nine square feet per rabbit; or
- a requirement to address sanitary conditions in a manner that prevents accumulation of animal waste in a quantity sufficient to create an offensive odor or the attraction of pests.

C.S.H.B. 1686 voids a municipal ordinance or restrictive covenant provision that violates the bill's provisions.

C.S.H.B. 1686 expressly does not do the following:

- require a property owners' association to permit the growing of fruits or vegetables or the raising or keeping of fowls or rabbits on property that is owned by the association or owned in common by the association's members; or
- restrict a property owners' association from taking the following actions:
 - regulating the size and shielding of, or the materials used in the construction of, an animal shelter that is visible from a street, another lot, or a common area if the restriction does not prohibit the economic installation of the animal shelter on the property owner's property;
 - regulating or prohibiting the installation of signage by a cottage food operation; or
 - regulating parking or vehicular or pedestrian traffic associated with a cottage food operation.

C.S.H.B. 1686 exempts a condominium unit from the bill's municipality provisions and exempts the following from the bill's property owners' association provisions:

- a condominium council of owners governed by the Condominium Act; and
- a unit owners' association governed by the Uniform Condominium Act.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1686 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original included the raising or keeping of three or fewer beehives as an activity that may not be prohibited on a single-family residential lot, whereas the substitute does not include that activity. With respect to the activity of keeping or raising rabbits, the substitute includes a specification not in the original that the numeric limit is the minimum allowed number of adult rabbits.

The substitute includes provisions not in the original authorizing the imposition of reasonable regulations, and the adoption and enforcement of a restrictive covenant imposing reasonable requirements, on the growing of fruits and vegetables on a single-family residential lot that do not have the effect of prohibiting the growing of the fruits or vegetables in the front, side, or rear yard of a residence, including a requirement that the growing area be maintained in good condition if visible from the street faced by the lot or from an adjoining lot.

The substitute includes language not in the original clarifying that the municipal regulations and restrictive covenant requirements that may be established regarding the raising or keeping of fowls or rabbits are for the purpose of controlling odor, noise, safety, or sanitary conditions. The substitute includes the following among the regulations and requirements that are expressly authorized, whereas the original does not:

- a requirement for fencing or shelter sufficient to contain the fowls or rabbits on the owner's property;
- minimum requirements for combined housing and outdoor space of at least 20 square feet per fowl and nine square feet per rabbit; and
- a requirement to address sanitary conditions in a manner that prevents accumulation of animal waste in a quantity sufficient to create an offensive odor or the attraction of pests.

With regard to the authorization to establish the minimum distance between an animal shelter and a residential structure, the substitute includes an exception not in the original for a structure that is the animal owner's own residence. The substitute retains the original's authorization to establish a limit on the number of fowls or rabbits that is more than the minimum number allowed by the bill, but it also provides for a cumulative cap of eight fowls and rabbits.

The substitute includes provisions not in the original establishing that the bill does not do the following:

- require a property owners' association to permit the growing of fruits or vegetables or the raising or keeping of fowls or rabbits on property owned by the association or owned in common by the association's members; or
- restrict a property owners' association from taking the following actions:
 - regulating the size and shielding of, or the materials used in the construction of, an animal shelter that is visible from a street, another lot, or a common area if the restriction does not prohibit the economic installation of the animal shelter on the property owner's property;
 - regulating or prohibiting the installation of signage by a cottage food operation; or
 - regulating parking or vehicular or pedestrian traffic associated with a cottage food operation.

The substitute includes provisions not in the original establishing exemptions for a condominium unit, a condominium council of owners, or a unit owners' association.