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[California Law](#)
[Publications](#)
[Other Resources](#)
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AB-3074 Fire prevention: wildfire risk: defensible space: ember-resistant zones. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

NO. 3074

Introduced by Assembly Member Friedman

February 21, 2020

An act to amend Sections 51182 and 51186 of the Government Code, and to amend Section 4291 of the Public Resources Code, relating to fire prevention.

LEGISLATIVE COUNSEL'S DIGEST

AB 3074, as introduced, Friedman. Fire prevention: wildfire risk: defensible space: ember-resistant zones.

Existing law requires the Director of Forestry and Fire Protection to identify areas in the state as very high fire hazard severity zones based on specified criteria and the severity of the fire hazard. Existing law requires a person who owns, leases, controls, operates, or maintains an occupied dwelling or structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material that is within a very high fire hazard severity zone, as designated by a local agency, or a building or structure in, upon, or adjoining those areas or lands within a state responsibility area, to maintain a defensible space of 100 feet from each side and from the front and rear of the structure, as specified. A violation of these requirements is a crime.

This bill would require a person described above to use more intense fuel reductions between 5 and 30 feet around the structure, and to create an ember-resistant zone within 5 feet of the structure, as provided. Because a violation of these provisions would be a crime or expand the scope of an existing crime, the bill would impose a state-mandated local program.

The bill would require each local agency having jurisdiction of property upon which conditions that are regulated by the defensible space provisions described above apply and the Department of Forestry and Fire Protection to make reasonable efforts to provide notice to affected residents of the above requirements before imposing penalties for a violation of those requirements. By expanding the duty of a local agency, the bill would impose a state-mandated local program.

Existing law requires the Department of Forestry and Fire Protection to develop, periodically update, and post on its internet website a guidance document on fuels management, as provided.

This bill would require, on or before January 1, 2023, the department to update the guidance document to include suggestions for creating an ember-resistant zone within 5 feet of a structure, as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Catastrophic wildfires pose an urgent threat to lives, properties, and resources in California. The state experienced the deadliest and most destructive wildfires in its history in 2017 and 2018. Fueled by five years of drought, unprecedented buildup of dry vegetation, and extreme winds, the size and intensity of recent wildfires caused the loss of more than 100 lives, the destruction of tens of thousands of homes and businesses, and the exposure of millions of urban and rural Californians to unhealthy air. Compared with fire activities in 1986, recent wildfires in the western United States have occurred nearly four times more often, burned more than six times the land area, and lasted almost five times as long.

(2) Climate change, an epidemic of dead and dying trees, a century of fire exclusion, and the proliferation of new homes in the wildland-urban interface magnify this threat and place substantially more people and property at risk than in preceding decades. More than 25,000,000 acres of California wildlands are classified as under very high or extreme fire threat, extending that risk over one-half of the state. More than 2,000,000 California households and approximately one in four residential structures in California are located within or near "high" or "very high" fire hazard severity zones identified on maps drawn by the Department of Forestry and Fire Protection.

(3) Certain populations in the state are particularly vulnerable to wildfire. These Californians live in communities that face near-term public safety threats given their location and geography. Some residents in these areas are made further vulnerable due to factors such as age and lack of mobility. The tragic loss of life and property in the Town of Paradise during the 2018 Camp Fire demonstrates that vulnerability.

(4) While California has stringent building standards for new construction and requirements for the maintenance of defensible space in wildfire hazard areas, the intensity of the wildfire threat in California warrants higher levels of action and fortitude. California must develop scalable statewide options to encourage cost-effective structure hardening to create fire-resistant homes, businesses, and public buildings within wildfire hazard areas, with a focus on vulnerable communities.

(5) California must also increase the pace and scale of defensible space assessments, inspections, and community education across the state. Creating and maintaining defensible space is essential for increasing a home's chance of surviving a wildfire. California should encourage and use all available resources, including community organizations and local governments, to help homeowners and businesses understand how to create and maintain defensible space around their properties.

(6) Ember ignitions are responsible for the majority of wildland fire home ignitions. Establishing a five-foot ember-resistant zone around a structure to eliminate specified materials near structures that will likely be ignited by embers provides important new protections that enhance a home's chance of surviving a wildfire.

(b) It is the intent of the Legislature that the amendments made by this act to Sections 51182 and 51186 of the Government Code and Section 4291 of the Public Resources Code, which create a requirement for an ember-resistant zone five feet from a structure, should be phased in over time for existing structures.

(c) It is the intent of the Legislature that the Department of Forestry and Fire Protection pursue collaborative approaches to achieve compliance with new defensible space requirements, taking into account property owners' financial resources and the scope of work necessary to achieve compliance.

(d) It is the intent of the Legislature that the Department of Forestry and Fire Protection take enforcement actions on violations as a last resort in seeking compliance with the ember-resistant zone requirements for

existing structures.

SEC. 2. Section 51182 of the Government Code is amended to read:

51182. (a) A person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material, which area or land is within a very high fire hazard severity zone designated by the local agency pursuant to Section 51179, shall at all times do all of the following:

(1) ~~(A)~~ Maintain defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property line except as provided in ~~paragraph (2)~~ *subparagraph (B)*. The amount of fuel modification necessary shall ~~take into account~~ *consider* the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This ~~paragraph~~ *subparagraph* does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, ~~the most intense being within the first~~ *with more intense fuel reductions being used between 5 and 30 feet around the structure, and an ember-resistant zone being required within 5 feet of the structure, based on regulations promulgated by the State Board of Forestry and Fire Protection, in consultation with the Department of Forestry and Fire Protection, to consider the elimination of materials in the ember-resistant zone that would likely be ignited by embers.* Consistent with fuels management objectives, steps should be taken to minimize erosion.

~~(2)~~

~~(B)~~ A greater distance than that required under ~~paragraph (1)~~ *subparagraph (A)* may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

~~(3)~~

~~(C)~~ An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under ~~paragraph (1)~~ *subparagraph (A)* if a fire expert, designated by the fire chief or fire official from the authority having jurisdiction, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

~~(4)~~

~~(2)~~ Remove that portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe.

~~(5)~~

~~(3)~~ Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

~~(6)~~

~~(4)~~ Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

~~(7)~~ *Prior to*

~~(5)~~ *Before* constructing a new dwelling or structure that will be occupied or rebuilding an occupied dwelling or occupied structure damaged by a fire in that zone, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state

and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) (1) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its ~~Internet Web-site~~ *internet website* a guidance document on fuels management pursuant to this chapter. ~~Guidance~~ *The guidance document* shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native ~~species,~~ *species that are fire resistant or drought tolerant, or both,* minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, decks, and outdoor lawn furniture.

(2) On or before January 1, 2023, the Department of Forestry and Fire Protection shall update the guidance document to include suggestions for creating an ember-resistant zone within five feet of a structure based on regulations promulgated by the State Board of Forestry and Fire Protection, in consultation with the Department of Forestry and Fire Protection, to consider the elimination of materials in the ember-resistant zone that would likely be ignited by embers.

SEC. 3. Section 51186 of the Government Code is amended to read:

51186. (a) The local agency having jurisdiction of property upon which conditions regulated by Section 51182 are being violated shall notify the owner of the property to correct the conditions. If the owner fails to correct the conditions, the local agency may cause the corrections to be made, and the expenses incurred shall become a lien on the property that is the subject of the corrections when recorded in the county recorder's office in the county in which the real property is located. The priority of the lien shall be as of the date of recording. The lien shall contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll.

(b) (1) Each local agency having jurisdiction of property upon which conditions that are regulated by Section 51182 apply shall make reasonable efforts to provide notice to affected residents within the jurisdiction of the local agency describing the requirements added by the amendments to paragraph (1) of subdivision (a) of Section 51182 made in Assembly Bill ____ of the 2019–20 Regular Session before the imposition of penalties for violating those requirements.

(2) (A) The requirement for an ember-resistant zone pursuant to Section 51182 shall not take effect for new structures until the Department of Forestry and Fire Protection updates the guidance document pursuant to paragraph (2) of subdivision (c) of Section 51182.

(B) The requirements for an ember-resistant zone pursuant to Section 51182 shall take effect for existing structures one year after the effective date for the new structures.

SEC. 4. Section 4291 of the Public Resources Code is amended to read:

4291. (a) A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, shall at all times do all of the following:

(1) *(A) Maintain defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property* ~~line~~ *line*, except as provided in ~~paragraph (2): subparagraph (B).~~ The amount of fuel modification necessary shall ~~take into account~~ *consider* the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This ~~paragraph subparagraph~~ does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, ~~the most intense being within the first~~ *with more intense fuel reductions being utilized between 5 and 30 feet around the* ~~structure.~~ *structure, and an ember-resistant zone being required within 5 feet of the structure, based on regulations promulgated by the board, in consultation with the department, to consider the elimination of materials in the ember-resistant zone that would likely be*

ignited by embers. Consistent with fuels management objectives, steps should be taken to minimize erosion. For the purposes of this ~~paragraph~~, *subparagraph*, "fuel" means any combustible material, including petroleum-based products and wildland fuels.

~~(2)~~

(B) A greater distance than that required under ~~paragraph (1)~~ *subparagraph (A)* may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

~~(3)~~

(C) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under ~~paragraph (1)~~ *subparagraph (A)* if a fire expert, designated by the director, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

~~(4)~~

(2) Remove that portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe.

~~(5)~~

(3) Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

~~(6)~~

(4) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

~~(7) Prior to~~

(5) Before constructing a new building or structure or rebuilding a building or structure damaged by a fire in an area subject to this section, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) (1) Except as provided in Section 18930 of the Health and Safety Code, the director may adopt regulations exempting a structure with an exterior constructed entirely of nonflammable materials, or, conditioned upon the contents and composition of the structure, the director may vary the requirements respecting the removing or clearing away of flammable vegetation or other combustible growth with respect to the area surrounding those structures.

(2) An exemption or variance under paragraph (1) shall not apply unless and until the occupant of the structure, or if there is not an occupant, the owner of the structure, files with the department, in a form as the director shall prescribe, a written consent to the inspection of the interior and contents of the structure to ascertain whether this section and the regulations adopted under this section are complied with at all times.

(d) The director may authorize the removal of vegetation that is not consistent with the standards of this section. The director may prescribe a procedure for the removal of that vegetation and make the expense a lien upon the

building, structure, or grounds, in the same manner that is applicable to a legislative body under Section 51186 of the Government Code.

(e) (1) The department shall develop, periodically update, and post on its ~~Internet Web site~~ *internet website* a guidance document on fuels management pursuant to this chapter. ~~Guidance~~ *The guidance document* shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species that are fire resistant or drought tolerant, or both, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, decks, and outdoor lawn furniture.

(2) On or before January 1, 2023, the department shall update the guidance document to include suggestions for creating an ember-resistant zone within five feet of a structure, based on regulations promulgated by the board, in consultation with the department, to consider the elimination of materials in the ember-resistant zone that would likely be ignited by embers.

(f) The department shall do both of the following:

(1) Identify the types of vegetation or fuel that are to be excluded from an ember-resistant zone based on the probability that vegetation and fuel will lead to ignition by ember of a structure as a part of the update to the guidance document pursuant to paragraph (2) of subdivision (e).

(2) (A) Make reasonable efforts to provide notice to affected residents describing the requirements added by the amendments to paragraph (1) of subdivision (a) made in Assembly Bill ____ of the 2019–20 Regular Session before the imposition of penalties for violating those requirements.

(B) (i) The requirement for an ember-resistant zone pursuant to paragraph (1) of subdivision (a) shall not take effect for new structures until the department updates the guidance document pursuant to paragraph (2) of subdivision (e).

(ii) The requirement for an ember-resistant zone pursuant to paragraph (1) of subdivision (a) shall take effect for existing structures one year after the effective date for the new structures.

~~(f)~~

(g) As used in this section, "person" means a private individual, organization, partnership, limited liability company, or corporation.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.