



## Legislation Text

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**File #:** 23-1644, **Version:** 1

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Chief Administrative Office, Office of Wildfire Preparedness and Resilience, recommending the Board consider the following:

- 1) Approve the **Introduction** (First Reading) of Ordinance **5186** to amend Chapter 8.09 of the El Dorado County Code of Ordinances entitled Hazardous Vegetation and Defensible Space; and
- 2) Waive full reading of the Ordinance, read by title only, and continue this matter to January 23, 2024, for **Final Passage** (Second Reading).

**FUNDING:** General Fund.

### **DISCUSSION / BACKGROUND**

Catastrophic wildfire events continue to pose a threat to the preservation of public peace, health, and safety across the State of California, including El Dorado County. Beginning in the 1960s, the State has enacted a variety of laws and regulations to mitigate the risk of wildfire in wildland urban interface and intermix communities including the creation and maintenance of defensible space. As these regulations have continued to evolve over time, the proper implementation and enforcement of hazardous fuel regulations and landscaping requirements have proven to reduce the risk and impact from destructive wildfires through the mitigation of hazardous fuel conditions around homes and roadways. An overview of these guiding State laws and regulations is provided below:

#### Public Resources Code 4291:

Originally enacted by the State of California in the 1960s, Public Resources Code (PRC) 4291 establishes defensible space requirements and regulations for properties in California to protect wildland and watershed areas from risks of fires presented by development. PRC 4291 further outlines the responsibilities of property owners in creating and maintaining defensible space around structures to reduce the spread of wildfires. PRC 4291 has been amended in recent years to address additional mitigation measures and extend the defensible space clearance requirement from 30-feet around each applicable structure to 100-feet.

#### California Code of Regulations, Title 14:

California Code of Regulations (CCR), Title 14, Division 1.5, Chapter 7, Fire Prevention, was enacted to establish the basic wildfire protection standards of the California Board of Forestry and Fire Protection in conjunction with building, construction, and development throughout the State. Title 14 has since been amended to further define the roles and responsibilities of enforcement and implementation of defensible space requirements and wildfire protection measures in both State Responsibility Areas (SRAs) and Local Responsibility Areas (LRAs) in order to effectively implement PRC 4291 across the State.

Consistent with these laws and regulations, local governments have the ability to adopt an ordinance that includes regulations that exceed the State minimum defensible space requirements but cannot be less restrictive than State law. With the growing severity and risk of wildfires in El Dorado County over the last two decades, the County elected to develop a local ordinance to enact defensible space requirements above the State's minimum standards as well as to identify and implement a means of

local enforcement for defensible space.

On April 30, 2019 (File No. 19-0630 V2, Item No. 11) the Board, based upon recommendations of staff and the Ad Hoc Code Enforcement Advisory Committee, adopted the Vegetation Management and Defensible Space Ordinance 5101 (Ordinance 5101) to add Chapter 8.09, Vegetation Management and Defensible Space, to Title 8 Public Health and Safety to address vegetation management issues across the County and enforcement in an effort to help communities become safer against the risk of wildfires. The purpose of Ordinance 5101 is to provide for the removal of hazardous vegetation and combustible materials situated in the unincorporated areas of the County to reduce the potential for fire and promote the safety and welfare of the community.

On February 25, 2020 (File No. 20-0098 V2, Item No. 5), the Board approved amendments to Ordinance 5101 to allow for flexible timelines, clarify the roles and responsibilities of investigative and enforcement officials for a more centralized and uniform approach to enforcement, and to update definitions to identify and recognize County Emphasis Areas and Wildfire Risk Areas.

On September 21, 2021 (File No. 21-1515, Item No. 38), the Board directed the Chief Administrative Office to convene a vegetation management and resiliency working group to collaborate on lessons learned from the Caldor Fire in order to define funding streams and initiate a robust, community-based resiliency and vegetation management program that would accelerate the current County efforts.

Following the Board's approval and creation of the Office of Wildfire Preparedness and Resilience (OWPR) in 2022 (File No. 22-0491, Item No. 33) and based upon recommendations of the now Wildfire Preparedness and Resilience Coordination Group, a working group was established and tasked with reviewing the County's existing ordinances and methods used to complete defensible space inspections of individual residential, commercial, and industrial structures with the purpose of making recommendations to implementation strategies and language within Ordinance 5101, including how to incorporate vacation home rental (VHR) properties. This Defensible Space Work Group (Working Group) is comprised of experts in fire prevention and members representing stakeholder agencies and organizations throughout the County, including the California Department of Forestry and Fire Protection (CAL FIRE), local fire districts, Fire Prevention Officers Association, the El Dorado County Fire Safe Council, California Tahoe Conservancy, City of South Lake Tahoe, City of Placerville, other County departments, and other organizations.

Since its formation in September 2022, the Working Group has met on a bi-weekly basis to evaluate the existing Ordinance 5101, policy issues and challenges impacting implementation, its progress on meeting objectives identified by the Working Group in the workplan, and recommendations for improvements. Policy issues reviewed included:

1. Ensuring public and private property owners create and maintain defensible space to a low-risk category in accordance with Ordinance 5101, PRC 4291, and Government Code §51182.
2. Confirming that Ordinance 5101 is current with both State law and current best industry practices.
3. Evaluating the adequacy of the defensible space regulations pertaining to Chapter 5.56.020 (Vacation Home Rental Program) of the County's Code of Ordinances to ensure consistency

with both Ordinance 5101 and State wildfire prevention regulations.

4. Providing various alternatives on the means and methods to perform home hardening and defensible space evaluations throughout the County.

As part of the evaluation of the existing Ordinance 5101, the Working Group conducted a Strengths, Weakness, Opportunity, and Threats (SWOT) analysis. Overall, the Working Group concluded that while Ordinance 5101 is helpful in providing local regulatory guidance on defensible space, there were a number of areas within the Ordinance that needed to be updated to provide clarity and enhancements to reduce the threat of loss of life and/or property damage from wildfire specific to El Dorado County, and in a few instances, that exceed the State required minimum standards. As such, the Working Group proposed changes to the Ordinance including, but not limited to:

- Updating the title of the Ordinance to read Hazardous Vegetation and Defensible Space to better reflect the purpose of the Ordinance.
- The addition and modification of findings to further support exemption of the Ordinance and its requirements under the California Environmental Quality Act (CEQA).
- The addition, modification, and/or removal of various definitions to clarify the purpose and applicability of the regulations within the Ordinance.
- The addition of regulatory requirements related to critical infrastructure as defined in the Ordinance and specific criteria to reduce the risk of damage to these facilities from a wildfire.
- The deletion of several existing sections found in prior versions of the regulations to streamline the requirements, ensure consistency with other County ordinances, and eliminate unnecessary provisions.
- The modification of the enforcement, appeal, and cost recovery provisions to improve efficiency.

Through multiple rounds of revisions and comparisons of definitions and requirements in PRC 4291 and CCR Title 14, the Working Group approved a final draft version of an amendment to Ordinance 5101 that encompasses all applicable defensible space requirements in a single local ordinance, is not onerous on property owners, and allows for flexibility where legally allowed to. In addition to the core revisions noted above, other notable modifications include:

Definition of a Structure:

For the purposes of this Ordinance, the definition of a Structure was updated to include buildings which qualify for occupancy classification per the County building code such as residential dwellings (includes trailers and mobile homes), commercial buildings, industrial buildings, agricultural buildings, barns, storage buildings, and any accessory buildings deemed appropriate for a site address by the County Surveyor. The purpose of this change was to create a uniform definition that is consistent with both State law and how a structure is defined in the County's building code for determination on when a building permit is required. Consistent with the County's building code, exception is provided for any freestanding

outbuilding that is less than 120 square feet in floor area, such as small sheds, pump houses, or other smaller accessory structures.

Definition of Responsible Person(s):

Existing State law under PRC 4291 indicates that defensible space requirements apply to 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. The Working Group determined that it was necessary to expand and clarify the applicability of the County's Ordinance by defining a Responsible Person to include any owner, tenant, occupant, lessor, manager, licensee, political subdivision, local government agency, municipality, or other person having control over a Structure or parcel of land. While PRC 4291 exempts Public School Districts and both State and Federal Lands, this updated definition provides for the applicability of defensible space requirements to local government agencies.

Definition of and Applicability to Critical Infrastructure:

Through the evaluation of the existing Ordinance 5101 and State law, the Working Group also determined that it was necessary to identify critical infrastructure facilities as additional facilities to which defensible space requirements apply. As such, Critical Infrastructure is defined to any use or facility classified within Essential Service Facilities, At-risk Population Facilities, or Hazardous Materials and Solid Waste Facilities. As further detailed in Section 8.09.070, specific defensible space requirements are defined for a wide variety of critical infrastructure facilities and buildings above those required by State law.

Real Estate Transactions:

In October 2019, the State passed Assembly Bill 38 (AB38) to require defensible space compliance at the point of sale for all real estate transactions meeting specific criteria. Effective July 1, 2021, California Civil Code section 1102.19 requires a seller of real property located in a High or Very High Fire Hazard Severity Zone within the State Responsibility Area (SRA) or Local Responsibility Area (LRA), to provide the buyer with documentation stating that the property is in compliance with the requirements of PRC 4291 for properties within the SRA or local vegetation management ordinances for properties within jurisdictions (SRA or LRA) that have enacted an ordinance requiring an owner to achieve compliance with PRC 4291 or Government Code 51182. Additionally, the law requires that if documentation demonstrating compliance cannot be obtained by the close of escrow, a written agreement showing that the buyer agrees to obtain documentation of compliance to either PRC 4291 for properties within the SRA, or a local ordinance for properties within jurisdictions that have enacted an ordinance, within one year of the close of escrow.

As the County has an existing defensible space ordinance (Ordinance 5101), the Working Group determined it was necessary to update Section 8.09.070 of the Ordinance to account for this change in State law regarding real estate transactions. A summary of these changes is provided below.

- In accordance with Sec. 8.09.070.C - Duty to Remove and Abate Hazardous Vegetation and Combustible Material, prior to the close of any Real Estate Transaction subject to Civil Code section 1102.19 within the County, the seller shall obtain a defensible space

inspection report from an Investigating Official indicating that the property is in compliance with this Chapter.

- If the property is determined not to be compliant with this Chapter, the Responsible Person(s) will be required to perform the necessary wildfire protection measures and have the property reinspected prior to the close of escrow.
- If the property is not in compliance, the buyer shall agree to achieve compliance within 90 days of the close of escrow.

For the purpose of this Ordinance, and consistent with State law, documentation of compliance during real estate transactions applies to any residential property that meets all of the following criteria:

- The subject property for sale contains one (1) to four (4) residential units; and
- The subject property is located within a High or Very High Fire Hazard Severity Zone in either an SRA or LRA.

While AB 38 requires that documentation be provided from the seller to the buyer indicating compliance with defensible space requirements prior to the close of escrow, it does allow for the buyer and seller to enter into an agreement stating that the buyer will achieve compliance within one (1) year of the close of escrow. Through evaluating options available to the County under a local ordinance, the Working Group is recommending that the County adopt a more stringent timeline of obtaining documentation of defensible space compliance within 90 days of the close of escrow. While shorter than the one (1) year period, the 90 days does allow for a grace period for the buyer to achieve compliance. It should also be noted that the inability to obtain compliance documentation during an escrow period, particularly those with abbreviated timelines, will not preclude the close of escrow. Additionally, sellers also have the ability to request a defensible space inspection, complete defensible space work, and achieve compliance in advance of escrow as the inspection reports and documentation of compliance are valid for six (6) months. Lastly, defensible space requirements would apply to a buyer from day one, so the 90 day window provides for a grace period to achieve compliance.

#### Requirement for Greater Distances:

Existing State law allows for the applicability of defensible space clearance distances beyond the standard 100-feet; however, it does not specify a maximum distance. The Working Group agreed that for this Ordinance, it was appropriate to cap the greater distance requirement at 300-feet. As properties and fire hazards vary throughout the County based on topography, fuel types, climate and environmental conditions, and other characteristics, it was determined that this requirement will be evaluated and applied on a case by case basis when an investigation report by the Investigating Official, and supported by the Enforcement Official, includes documented information that the additional clearing is necessary to significantly reduce the risk of ignition to a structure and spread of wildfire, and there is no other feasible mitigation measure possible to reduce that risk.

#### Good Neighbor Policy:

With the addition and definition of Responsible Person, it was also necessary to update the existing section of the Ordinance containing the Good Neighbor Policy to clarify the roles and responsibilities for creating and maintaining the 100-feet of defensible space clearance around a structure. As updated, when a Structure is less than 100-feet from a property line and Hazardous Vegetation, as defined in the Ordinance, exists on the adjacent parcel and presents a Fire Hazard for the subject Structure, the Responsible Person of that adjacent parcel (neighbor) where the Fire Hazard exists shall be responsible for removing the Fire Hazard in the area that is within the 100-foot defensible space clearance zone of the Structure.

#### Enforcement Procedures:

As the County has recently amended its Code Enforcement processes under Chapter 9.02 of the County Code of Ordinances, it was determined by the Working Group that this Ordinance should follow suit for the purposes of consistency and efficiency. With the adoption of Ordinance 5101 in 2019, enforcement procedures at the local level were implemented to be less stringent than that of State law under PRC 4291, which allows for the application of criminal charges and a misdemeanor offense for violation of defensible space requirements. With applying an administrative enforcement and abatement process, this allows for the County to address violations at the local level through civil cases. Enforcement and abatement procedures have been updated throughout the proposed Ordinance to refer back to and be consistent with Chapter 9.02. As an additional means of the County's education and outreach approach to gain voluntary compliance with defensible space requirements, a Meet and Confer process has also been updated as an alternative to the enforcement process in which the Responsible Person(s) can meet with the Enforcement Official to discuss and mutually agree to acceptable methods to correct violations.

Beginning in September 2023, the Working Group conducted a series of public review workshops with various stakeholders, agencies, associations, and members of the public to provide an overview of the proposed changes to Ordinance 5101 and to address concerns and questions related to the changes. Feedback on the proposed revisions was received both during these workshops and in writing, and after a review of each comment, the Working Group determined that further changes to the Ordinance were not necessary.

Staff is recommending the Board approve the proposed changes, as outlined in the Proposed Ordinance Redline (Attachment C) and Summary of Changes (Attachment D) and direct staff to return to the Board at its regularly scheduled meeting on January 23, 2024 with a final version of Ordinance 5186, including any additional modifications determined necessary by the Board, for final passage. Pursuant to Government Code section 25123, this Ordinance 5186 would become effective 30 days from the date of final passage.

As OWPR's Defensible Space Program and home hardening and defensible space legislative requirements evolve, staff will continue to evaluate the program, resources, and the effectiveness of this Ordinance in coordination with the Working Group, Coordination Group, and other stakeholders. As part of an annual update to the Board, OWPR will also provide an update to the Board related to defensible space efforts.

#### **ALTERNATIVES**

The Board may choose not to adopt the proposed revisions to Chapter 8.09 or direct staff to make

further modifications and return to the Board at a later date. The Board may also elect to repeal Chapter 8.09 in its entirety without a replacement ordinance. Without a local defensible space ordinance, requirements would still apply as required under State law (PRC 4291 and Title 14); however, the enforcement of such requirements would default to the State under CAL FIRE. By doing so, this would not only potentially jeopardize future grant funding opportunities for hazardous vegetation and defensible space projects but would also impact the County's ability to obtain the designation and placement on the Fire Risk Reduction Community List through the State Board of Forestry and Fire Protection. This designation would apply to the County as a whole and allow for insurance discounts for residential property owners. In order to achieve this designation, the County would be required to adopt a local defensible space ordinance or regulations that exceed the State minimum regulations under 14 CCR section 1299.03.

### **PRIOR BOARD ACTION**

See Discussion/Background above.

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

Chief Administrative Office  
CAL FIRE Amador El Dorado Unit  
CAL FIRE Office of the State Fire Marshall  
California Tahoe Conservancy  
El Dorado County Fire Chiefs Association  
El Dorado County Fire Safe Council  
El Dorado County Fire Prevention Officers Association  
El Dorado County Fire Protection District  
El Dorado Hills Fire Department  
City of South Lake Tahoe Fire Department  
City of Placerville  
Lake Valley Fire Protection District  
Planning and Building Department

### **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

### **FINANCIAL IMPACT**

There is no change to Net County Cost associated with this item. As staff implement the enforcement of defensible space requirements, it is possible that there will be an increase in revenue from fines; however, that revenue is anticipated to fluctuate on an annual basis.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) If approved, continue this matter to the Board of Supervisors regular meeting scheduled on January 23, 2024 for Final Passage (Second Reading).
- 2) Following Board approval, publish the Ordinance within 15 days after its passage in a newspaper of general circulation published and circulated in the County.

### **STRATEGIC PLAN COMPONENT**

Public Safety, Healthy Communities, Good Governance

### **CONTACT**

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Chief Administrative Office