To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Mary Linden, Executive Assistant

Approved by: Reva Feldman, City Manager

Date prepared: April 6, 2020  
Meeting date: April 27, 2020

Subject: Assembly Bills 2436, 3074 and 2367 – Support (Mayor Farrer)

RECOMMENDED ACTION: At the request of Mayor Farrer, authorize letters of support for: 1) Assembly Bill (AB) 2436, which will help consumers comply with applicable building codes in place after a major property loss; 2) AB 3074, which would require the California Department of Forestry and Fire Protection (CALFire) to update its guidance on or before January 1, 2023 to include creation of an ember-resistant zone within five feet of a structure; and 3) AB 2367, which would create the Wildfire Resilience Task Force, to establish minimum standards for fire-hardened homes and communities.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2019-2020. This project is part of normal staff operations.

DISCUSSION:

AB 2436 (Bloom)
Assemblymember Richard Bloom has introduced AB 2436 (Attachment 1), a bill that would help homeowners who were affected by catastrophic wildfires in the last few years comply with applicable building codes in place after a major property loss. AB 2436 would provide Building Code Upgrade coverage to homeowners to help cover the cost of building codes that are in effect at the time of rebuild, not at the time of loss. Additionally, the bill would require fire policies to include a minimum of 15% of primary dwelling limits, included in the bill as Coverage A, as an additional amount available for replacement costs of the insured structure. The attached fact sheet (Attachment 2) provides further information on the bill for reference.
Assemblymember Bloom believes this bill would be a great benefit to Malibu as it will help reduce some of the out-of-pocket costs homeowners are facing when trying to rebuild their homes after the devastating Woolsey Fire in 2018.

**AB 3074**
A second bill, AB 3074, has been introduced by Assemblymember Friedman to change State fire guidance to add a requirement for the creation of an ember-resistant zone within five feet of any structure.

Homes that have ignited in a high intensity wildfire can send embers incredible distances. Defensible space is an important tool to stop the spread of wildfires and provide a space for firefighters to put out the fire. Current law for high fire hazard areas, including Malibu, includes a two-zone defensible space strategy with the first zone within 30 feet of the home and the second zone extending outward from 30-100 feet of the home.

AB 3074 would require the CALFire to update its guidance on or before January 1, 2023 to include creation of a third zone that would be an ember-resistant zone within five feet of a structure.

Existing law generally regulates classes of insurance, including residential fire and property insurance, and defines the measure of indemnity for a loss under a property insurance policy.

**AB 2367**
AB 2367, introduced by Assemblymember Gonzalez, would create the Wildfire Resilience Task Force, including the State Insurance Commissioner, Director of the Office of Emergency Services, and the State Fire Marshal. In consultation with CALFire and the Governor’s Office of Planning and Research, the Task Force would develop statewide standards for home and community hardening.

Data released by the California Department of Insurance in August 2019 showed that insurance is becoming harder to find for communities across the state. In response to several consecutive years of devastating wildfires, insurance companies have been writing fewer homeowner policies and sharply increasing non-renewals of homes with wildfire risk. Lack of insurance has sparked a wildfire “domino effect” that disrupts real estate markets and threatens the property tax base that local communities rely on to fund emergency services and more.

Following the major wildfires that have ravaged California since 2016, homeowners in high fire danger zones have been hardening their homes and mitigating for fire danger. AB 2367 would provide for hardened homes in communities that meet the standards established by the Task Force to receive a guaranteed offer or renewal of insurance.
contributing to community resilience while ending the cycle of lost home sales, falling prices, and declining property values negatively impacting communities across the state.

Although the California State Legislature is in a recess that is likely to be extended, Committees are moving forward with preparing for hearings. While scheduling is pending, decisions are underway regarding which bills may eventually be heard.

Obviously, legislative priorities have shifted dramatically due to the COVID-19 crisis; however, Assemblymembers Bloom, Friedman, and Gonzalez are still hopeful that, with enough support, there will be an opportunity to move AB 2436, AB 3074, and AB 2367 forward later this year. For these reasons, Mayor Farrer is requesting the Council authorize her to submit letters of support for AB 2436, AB 3074, and AB 2367.

ATTACHMENTS:

1. AB 2436
2. AB 2436 Fact Sheet
3. AB 3074
4. AB 3074 Fact Sheet
5. AB 2367
An act to amend Sections 10102 and 10103 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL’S DIGEST

AB 2436, as introduced, Bloom. Residential property insurance. Existing law generally regulates residential property insurance. Existing law prescribes the standard form of the California Residential Insurance Disclosure, which sets forth a description of certain types of insurance coverage, and explains that building code upgrade coverage covers additional costs to comply with building codes in effect at the time of loss or rebuilding. Existing law requires specified information, including whether or not the policy provides building code upgrade coverage for the increased costs of repairing or replacing damage because of building ordinances or laws, to be included on the declarations page of a residential property insurance policy.

This bill would require a policy of residential property insurance to include building code upgrade coverage of no less than 15% of the dwelling coverage policy limits. The bill would require building code upgrade coverage to be based on the increased costs associated with building ordinances and laws at the time of rebuilding, and not at the time of the loss. The bill would amend the California Residential Insurance Disclosure to specify that building code upgrade coverage covers additional costs to comply with building codes only in effect at the time of rebuilding. The bill would require additional information relative to building code upgrade coverage to be stated on the
declarations page of a residential property insurance policy, including any applicable limits on that coverage.


The people of the State of California do enact as follows:

SECTION 1. Section 10102 of the Insurance Code is amended to read:

10102. (a) The disclosure required by Section 10101 shall be in no less than 10-point typeface and shall be provided prior to or concurrent with, the application for a policy of residential property insurance. In the event that an application is made by telephone, an insurer that mails a copy of the disclosure within three business days shall be in compliance with this section. For policies issued on or after July 1, 1993, the agent or insurer shall obtain the applicant’s signature acknowledging receipt of the disclosure form within 60 days of the date of the application. When the insurer or agent establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer or agent provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer or agent has complied with the disclosure requirement of this chapter. The insurer or agent shall have the burden of demonstrating in accordance with California Rules of Evidence that the disclosure was provided to the applicant or insured. A signature shall not be required at the time of renewal.

If the disclosure is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or to the address requested by the applicant. First-class mail shall be deemed adequate for proof of mailing. The insurer shall have the burden of demonstrating in accordance with California Rules of Evidence that the disclosure was mailed to the applicant or insured.

The disclosure shall contain the following language:
“NOTICE TO CONSUMERS—CALIFORNIA RESIDENTIAL INSURANCE DISCLOSURE

This disclosure is required by Section 10102 of the California Insurance Code. This form provides general information related to residential property insurance and is not part of your residential property insurance policy. Only the specific provisions of your policy will determine whether a particular loss is covered and the amount payable. The information provided does not preempt existing California law.

PRIMARY FORMS OF RESIDENTIAL DWELLING COVERAGE

You have purchased the coverage(s) checked below. NOTE: Actual Cash Value Coverage is the most limited level of coverage listed. Guaranteed Replacement Cost is the broadest level of coverage.

_____ ACTUAL CASH VALUE COVERAGE pays the costs to repair the damaged dwelling minus a deduction for physical depreciation. If the dwelling is completely destroyed, this coverage pays the fair market value of the dwelling at time of loss. In either case, coverage only pays for costs up to the limits specified in your policy.

_____ REPLACEMENT COST COVERAGE is intended to provide for the cost to repair or replace the damaged or destroyed dwelling without a deduction for physical depreciation. Many policies pay only the dwelling’s actual cash value until the insured has actually begun or completed repairs or reconstruction on the dwelling. Coverage only pays for replacement costs up to the limits specified in your policy.

_____ EXTENDED REPLACEMENT COST COVERAGE is intended to provide for the cost to repair or replace the damaged or destroyed dwelling without a deduction for physical depreciation. Many policies pay only the dwelling’s actual cash value until the insured has actually begun or completed repairs or reconstruction on the dwelling. Extended Replacement Cost provides additional coverage above the dwelling limits up to a stated percentage or specific dollar amount. See your policy for the additional coverage that applies.

_____ GUARANTEED REPLACEMENT COST COVERAGE covers the full cost to repair or replace the damaged or destroyed dwelling for a covered peril regardless of the dwelling limits shown on the policy declarations page.

_____ BUILDING CODE UPGRADE COVERAGE, also called Ordinance and Law coverage, is an important option that covers additional costs to repair or replace a dwelling to comply with the building codes and zoning laws in effect at the time of loss or rebuilding. These costs may otherwise be excluded by your policy. Meeting current building code requirements can add significant costs to rebuilding your home. Refer to your policy or endorsement for the specific coverage provided and coverage limits that apply.

READ YOUR POLICY AND POLICY DECLARATIONS PAGE CAREFULLY: The policy declarations page shows the specific coverage limits you have purchased for your dwelling, personal property, separate structures such as detached garages, and additional living expenses. The actual policy and endorsements provide the details on extensions of coverage, limitations of coverage, and coverage conditions and exclusions. The amount of any claim payment made to you will be reduced by any applicable deductibles shown on your policy declarations page. It is important to take the time to consider whether the limits and limitations of your policy meet your needs. Contact your agent, broker, or insurance company if you have questions about what is covered or if you want to discuss your coverage options.
INFORMATION YOU SHOULD KNOW ABOUT RESIDENTIAL DWELLING INSURANCE

AVOID BEING UNDERINSURED: Insuring your home for less than its replacement cost may result in your having to pay thousands of dollars out of your own pocket to rebuild your home if it is completely destroyed. Contact your agent, broker, or insurance company immediately if you believe your policy limits may be inadequate.

THE RESIDENTIAL DWELLING COVERAGE LIMIT: The coverage limit on the dwelling structure should be high enough so you can rebuild your home if it is completely destroyed. Please note:

- The cost to rebuild your home is almost always different from the market value.
- The estimate to rebuild your home should be based on construction costs in your area and should be adjusted to account for the features of your home. These features include but are not limited to the square footage, type of foundation, number of stories, and the quality of the materials used for items such as flooring, countertops, windows, cabinetry, lighting and plumbing.
- The cost to rebuild your home should be adjusted each year to account for inflation.
- Coverage limits for contents, separate structures, additional living expenses and debris removal are usually based on a percentage of the limit for the dwelling. If your dwelling limit is too low, these coverage limits may also be too low.

You are encouraged to obtain a current estimate of the cost to rebuild your home from your insurance agent, broker, or insurance company or an independent appraisal from a local contractor, architect, or real estate appraiser. If you do obtain an estimate of replacement value, and wish to change your policy limits, contact your insurance company. While not a guarantee, a current estimate can help protect you against being underinsured.

DEMAND SURGE: After a widespread disaster, the cost of construction can increase dramatically as a result of the unusually high demand for contractors, building supplies and construction labor. This effect is known as demand surge. Demand surge can increase the cost of rebuilding your home. Consider increasing your coverage limits or purchasing Extended Replacement Cost coverage to prepare for this possibility.

CHANGES TO PROPERTY: Changes to your property may increase its replacement cost. These changes may include the building of additions, customizing your kitchen or bathrooms, or otherwise remodeling your home. Failure to advise your insurance company of any significant changes to your property may result in your home being underinsured.

EXCLUSIONS: Not all causes of damage are covered by common homeowners or residential fire policies. You need to read your policy to see what causes of loss or perils are not covered. Coverage for landslide is typically excluded. Some excluded perils such as earthquake or flood can be purchased as an endorsement to your policy or as a separate policy. Contact your agent, broker, or insurance company if you have a concern about any of the exclusions in your policy.

CONTENTS (PERSONAL PROPERTY) COVERAGE DISCLOSURE:
This disclosure form does not explain the types of contents coverage provided by your policy for items such as your furniture or clothing. Contents may be covered on either an actual cash value or replacement cost basis depending on the contract. Almost all policies include specific dollar-limits on certain property that is particularly valuable, such as jewelry, art, or silverware. Contact your agent, broker or insurance company if you have any questions about your contents coverage. You should create a list of all personal property in and around your home. Pictures and video recordings also help you document your property. The list, photos, and video should be stored away from your home.

CONSUMER ASSISTANCE
If you have any concerns or questions, contact your agent, broker, or insurance company. You are also encouraged to contact the California Department of Insurance consumer information line at (800) 927-HELP (4357) or at www.insurance.ca.gov for free insurance assistance.
“NOTICE TO CONSUMERS — CALIFORNIA RESIDENTIAL INSURANCE DISCLOSURE

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You have purchased the coverage(s) checked below. NOTE: Actual Cash Value Coverage is the most limited level of coverage listed. Guaranteed Replacement Cost is the broadest level of coverage.

_____ ACTUAL CASH VALUE COVERAGE pays the costs to repair the damaged dwelling minus a deduction for physical depreciation. If the dwelling is completely destroyed, this coverage pays the fair market value of the dwelling at time of loss. In either case, coverage only pays for costs up to the limits specified in your policy.

_____ REPLACEMENT COST COVERAGE is intended to provide for the cost to repair or replace the damaged or destroyed dwelling, without a deduction for physical depreciation. Many policies pay only the dwelling’s actual cash value until the insured has actually begun or completed repairs or reconstruction on the dwelling. Coverage only pays for replacement costs up to the limits specified in your policy.

_____ EXTENDED REPLACEMENT COST COVERAGE is intended to provide for the cost to repair or replace the damaged or destroyed dwelling without a deduction for physical depreciation. Many policies pay only the dwelling’s actual cash value until the insured has actually begun or completed repairs or reconstruction on the dwelling. Extended Replacement Cost provides additional coverage above the dwelling limits up to a stated percentage or specific dollar amount. See your policy for the additional coverage that applies.

_____ GUARANTEED REPLACEMENT COST COVERAGE covers the full cost to repair or replace the damaged or destroyed dwelling for a covered peril regardless of the dwelling limits shown on the policy declarations page.

_____ BUILDING CODE UPGRADE COVERAGE, also called Ordinance and Law coverage, covers additional costs to repair or replace a dwelling to comply with the building codes and zoning laws in effect at the time of rebuilding. These costs may otherwise be excluded by your policy. Meeting current building code requirements can add significant costs to rebuilding your home. Refer to your policy or endorsement for the specific coverage provided and coverage limits that apply.

READ YOUR POLICY AND POLICY DECLARATIONS PAGE CAREFULLY: The policy declarations page shows the specific coverage limits you have purchased for your dwelling, personal property, separate structures such as detached garages, and additional living expenses. The actual policy and endorsements provide the details on extensions of coverage, limitations of coverage, and coverage conditions and exclusions. The amount of any claim payment made to you will be reduced by any applicable deductibles shown on your policy declarations page. It is important to take the time to consider whether the limits and limitations of your policy meet your needs. Contact your agent, broker, or insurance company if you have questions about what is covered or if you want to discuss your coverage options.
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THE RESIDENTIAL DWELLING COVERAGE LIMIT: The coverage limit on the dwelling structure should be high enough so you can rebuild your home if it is completely destroyed. Please note:

- The cost to rebuild your home is almost always different from the market value.
- Dwelling coverage limits do not cover the value of your land.
- The estimate to rebuild your home should be based on construction costs in your area and should be adjusted to account for the features of your home. These features include but are not limited to the square footage, type of foundation, number of stories, and the quality of the materials used for items such as flooring, countertops, windows, cabinetry, lighting and plumbing.
- The cost to rebuild your home should be adjusted each year to account for inflation.
- Coverage limits for contents, separate structures, additional living expenses and debris removal are usually based on a percentage of the limit for the dwelling. If your dwelling limit is too low, these coverage limits may also be too low.

You are encouraged to obtain a current estimate of the cost to rebuild your home from your insurance agent, broker, or insurance company or an independent appraisal from a local contractor, architect, or real estate appraiser. If you do obtain an estimate of replacement value, and wish to change your policy limits, contact your insurance company. While not a guarantee, a current estimate can help protect you against being underinsured.

DEMAND SURGE: After a widespread disaster, the cost of construction can increase dramatically as a result of the unusually high demand for contractors, building supplies and construction labor. This effect is known as demand surge. Demand surge can increase the cost of rebuilding your home. Consider increasing your coverage limits or purchasing Extended Replacement Cost coverage to prepare for this possibility.

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EXCLUSIONS: Not all causes of damage are covered by common homeowners or residential fire policies. You need to read your policy to see what causes of loss or perils are not covered. Coverage for landslide is typically excluded. Some excluded perils such as earthquake or flood can be purchased as an endorsement to your policy or as a separate policy. Contact your agent, broker, or insurance company if you have a concern about any of the exclusions in your policy.

CONTENTS (PERSONAL PROPERTY) COVERAGE DISCLOSURE:
This disclosure form does not explain the types of contents coverage provided by your policy for items such as your furniture or clothing. Contents may be covered on either an actual cash value or replacement cost basis depending on the contract. Almost all policies include specific dollar limitations on certain property that is particularly valuable, such as jewelry, art, or silverware. Contact your agent, broker or insurance company if you have any questions about your contents coverage. You should create a list of all personal property in and around your home. Pictures and video recordings also help you document your property. The list, photos, and video should be stored away from your home.

CONSUMER ASSISTANCE
If you have any concerns or questions, contact your agent, broker, or insurance company. You are also encouraged to contact the California Department of Insurance consumer information line at (800) 927-HELP (4357) or at www.insurance.ca.gov for free insurance assistance."
(b) The agent or insurer shall indicate on the disclosure form which coverages the applicant or insured has selected or purchased.

(c) The disclosure statement may contain additional provisions not conflicting with, annulling, or detracting from the foregoing.

(d) Following the issuance of the policy of residential property insurance, the insurer shall provide the disclosure statement to the insured on an every-other-year basis at the time of renewal. The disclosure required by this section may be transmitted with the material required by Section 10086.1.

(e) No policy of residential property insurance may \textit{shall not} be initially issued on and after January 1, 1993, as guaranteed replacement cost coverage if it contains any maximum limitation of coverage based on any set dollar limits, percentage amounts, construction cost limits, indexing, or any other preset maximum limitation for covered damage to the insured dwelling. The limitations referred to in this section are solely applicable to dwelling structure coverages. Endorsements covering additional risks to the insurer’s dwelling structure coverage may have internal limits as long as those endorsements are not called guaranteed replacement cost coverage.

(f) On and after July 1, 1993, no policy of residential property insurance may \textit{shall not} be renewed as guaranteed replacement cost coverage if it contains any maximum limitation of coverage based on any set dollar limits, percentage amounts, construction cost limits, indexing, or any other preset maximum limitation for covered damage to the insured dwelling. The limitations referred to in this section are solely applicable to dwelling structure coverages. Endorsements covering additional risks to the insurer’s dwelling structure coverage may have internal limits as long as those endorsements are not called guaranteed replacement cost coverage.

(g) Coverage provided for building code upgrades by a policy of residential property insurance shall be applicable to building codes, ordinances, standards, or laws only to the extent that those codes, ordinances, standards, or laws do not impose stricter standards on the property on the basis of the level of insurance coverage applicable to the property.

(h) The disclosure required by Section 10101 shall also be provided to the mortgagor in the event that a policy is forced placed by an insurer at the request of a mortgagee. In those cases, neither
the insurer nor the mortgagee shall be required to obtain a signature from the mortgagor. No A disclosure shall not be required to be provided with respect to blanket policies issued to a mortgagee, and designed to provide interim coverage for losses occurring prior to before the mortgagee obtaining has knowledge of the lapse of the policy and prior to before placement of a policy on behalf of the mortgagor.

(i) A disclosure required by Section 10101 that is provided on and after January 1, 2020, shall include any fire safety-related discounts offered by the insurer.

SEC. 2. Section 10103 of the Insurance Code is amended to read:

10103. (a) No A policy of residential property insurance may not be issued or renewed in this state unless it provides the following information on the declarations page of the policy:

(1) The limits of liability for the structure.

(2) The following statement regarding the valuation of the structure:

“The limit of liability for this structure (Coverage A) is based on an estimate of the cost to rebuild your home, including an approximate cost for labor and materials in your area, and specific information that you have provided about your home.”

(3) Limits of liability for personal property.

(4) Deductibles.

(5) Whether A statement that the policy provides building code upgrade coverage for the increased costs of repairing or replacing damage to the insured dwelling caused by a covered loss because of building ordinances or laws regulating the repair. In the event that no coverage is provided for repairs that result from new building ordinances or laws, the insurer shall include in no less than 10-point typeface the following statement: “THIS POLICY DOES NOT INCLUDE BUILDING CODE UPGRADE COVERAGE.”

(b) If the policy includes building code upgrade coverage, it shall either do both of the following:

(1) State this it includes building code upgrade coverage on the declaration page, and denote page in no less than 10-point type,
state any applicable limits. Limits on the amount of coverage, and, if the policy contains other terms, conditions, or restrictions for coverage, disclose on the declarations page that those terms, conditions, or restrictions are identified on a separate disclosure form attached to the declarations page.

(2) State this on a separate disclosure form attached to the declarations page, if the separate disclosure form meets the following standards:

(A) It is printed in not less than 10-point type.

(B) It denotes any applicable limits on the amount of coverage.

(C) It denotes restrictions, if any, on coverage for compliance with applicable building codes which take effect after the date of loss but prior to the issuance of required building permits.

(2) If the building code upgrade coverage is subject to any terms, limits, conditions, or restrictions, state the terms, limits, conditions, or restrictions on a separate disclosure form attached to the declarations page. The separate disclosure form shall be printed in no less than 10-point type.

(c) A policy of residential property insurance shall not be issued or renewed unless it provides additional building code upgrade coverage of no less than 15 percent of the dwelling coverage policy limits. The building code upgrade coverage required by this subdivision shall be additional coverage, and use of this coverage shall not reduce or deplete the dwelling coverage policy limits for the insured property. This subdivision does not prohibit an insurer from offering building code upgrade coverage of greater than 15 percent of the dwelling coverage policy limits, in addition to providing the minimum coverage of 15 percent of the dwelling coverage policy limits.

(e) The provisions of paragraphs (1) and (2) of subdivision (a), subdivision (b), and subdivision (c) are not required for policies purchased by tenants or unit owners that do not cover the structure of the premises.
AB 2436 (Bloom)  
Insurance Coverage for Building Code Upgrades  
Fact Sheet

**PROBLEM**

Homeowners affected by the 2017, 2018 and 2019 catastrophic wildfires are in the midst of rebuilding their homes, but state and local authorities continue updating and adding building codes. These building codes will apply to the rebuild and are unlikely to be covered by their insurer. This leaves many unsuspecting homeowners forced to pay out-of-pocket to cover the cost of compliance with the updated/newly-added building codes or risk jeopardizing the rebuild altogether.

**EXISTING LAW**

Insurers currently offer Building Code Upgrade coverage as an option that homeowners can purchase to help cover the additional cost of repairing their home up to code after it has been damaged or destroyed. However, insurers have discretion as to whether to limit building code upgrade coverage to codes in effect at the time of loss or at the time of rebuild. As a result, many homeowners’ policies limit code upgrade coverage to compliance with building codes in effect at the time of loss, not at the time of rebuild.

**BACKGROUND**

Building codes are in place to protect public health, safety and general welfare as they relate to the construction and occupancy of building and structures. For residential construction, the California Building Standards Code (CBSC) includes provisions in the California Residential Code (CRC), the California Energy Code (CEC), and the California Green Building Standards Code (CGBSC). New editions of the CBSC are published every three years, beginning in 1989, in a triennial cycle with supplemental information published during other years. The most recent version of the code is the 2019 edition published January 1, 2020.

Although building codes may be changed or updated often, homeowners are not expected to update their property every time a new code is enacted. However, if the property needs to be rebuilt due to a disaster then it must meet the current codes in place at the time of the rebuild, which can be extremely costly.

For example, a home constructed in 2000 would have been built under the 1998 California Building Standards code. Since 2000, there have been seven complete residential code editions, each making the codes more restrictive and increasing construction costs. The California Energy Commission estimated the 2013 energy code added $2,000 to the cost of an average home and for the 2016 code an additional $2,700. Since this estimate, there have been an exponential number of code changes that have increased the costs of construction (i.e. fire sprinklers, solar panels, and etc.).

In addition to state laws, homeowners must also comply with local and federal law changes. All the increased costs associated with code updates adds significantly to the cost of construction. Also, most residential insurance policies provide building code upgrade coverage based upon 10% of the limit for the structure. For example, if the policy limit for the structure is $200,000, the building code upgrade coverage will be $20,000. In many cases, 10% is not enough coverage for the insured to pay for the increased costs to comply with building codes.

**SOLUTION**

AB 2436 would help consumers comply with applicable building codes in place after a major property loss by providing Building Code Upgrade coverage to homeowners that would help cover the cost of building codes that are in effect at the time of rebuild, not at the time of loss, and require fire policies to include a minimum of 15% of primary dwelling limits (“Coverage A”) as an additional amount available for replacement costs of the insured structure.

**SUPPORT**

Insurance Commissioner Ricardo Lara and the California Department of Insurance (Sponsor)

Version: 4/8/2020
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.


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). The amount of fuel modification necessary shall take into account 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 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.

(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.

(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.

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

(3) Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.
(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 website a guidance document on fuels management pursuant to this chapter. 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, except as provided in paragraph (2). The amount of fuel modification necessary shall take into account 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 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 5 feet, with more intense fuel reductions being utilized 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 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, “fuel” means any combustible material, including petroleum-based products and wildland fuels.

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

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

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

(7) Prior to 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 website a guidance document
on fuels management pursuant to this chapter. 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.

(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.
AB 3074 – Ember-resistant zones

Summary:
AB 3074 will protect Californians living in high fire hazard areas by modernizing defensible space protections through the creation of a third defensible space zone called an ember-resistant zone. This zone will be within the first five feet of a structure and will exclude vegetation or other fuel based on the probability that it will lead to ignition of the structure by embers.

Background:
During 2017 and 2018 California experienced the largest fires ever recorded in its history. In 2017, over 1.3 million acres burned in high-severity wildfires and over 10,000 structures were destroyed. In 2018, over 1.8 million acres burned and over 22,700 structures were destroyed. Over one hundred Californians have died from wildfires during those two years. Over 95% of the structures lost in those two years were residences.

The Department of Forestry and Fire Protection (CAL FIRE) keeps records of the largest and most destructive wildfires in the state’s history. Each year those records continue to be broken.

Defensible space, or the reduction and maintenance of vegetation around the home, is vital for protecting homes and communities from wildfire. Homes complying with the newest building standards are ignition resistant only if defensible space requirements are being met. Homes that have ignited in a high intensity wildfire can send embers incredible distances. Defensible space is an important tool to stop the spread of wildfires and provide a space for firefighters to put out the fire.

Current defensible space requirements have a two zone defensible space strategy. Zone one is within 30 feet of the home, and Zone two extends outward from 30-100 feet of the home. These traditional zones are important for reducing ignition from direct flame contact.

However, ember ignitions are responsible for the majority of wildland fire home ignitions. An ember-resistant zone will reduce ember ignitions protecting homes and lives.

The importance of the five-foot zone has been validated in lab tests. Numerous fire science experts such as scientists within the UC Division of Agriculture and Natural Resources, a former state Fire Marshal, and the National Fire Protection Association have advocated for this crucial zone as an effective way to protect structures. Many experts believe the ember resistant zone or zone zero is the most important component of a defensible space strategy. However, California does not educate residents living in high fire hazard areas about this zone.

AB 1516 (Friedman, 2019), among other things, would have created a zero to five feet ember resistant zone. AB 1516 was vetoed by the Governor.

AB 3074:

- Establishes a zero to five feet ember-resistant zone to be phased in with guidance from CAL FIRE and the Board of Forestry and Fire Protection for homes in Very High Fire Hazard Severity Zones in the local responsibility area and in the State Responsibility Area.

- Delays ember-resistant zone requirements for one year for existing structures. Requires notification to affected residents of ember-resistant zone requirements.

- Requires CAL FIRE to pursue collaborative approaches to achieve compliance with
ember-resistant zones and take enforcement actions as a last resort.

**Support:**

California Building Industry Association  
Fire Safe Council of San Diego County  
Perimeter Solutions  
Resource Conservation District of San Diego County  
Rural County Representatives of California  
Sierra Club California  
The Nature Conservancy  
Tree Care Industry Association

**Contact:**

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An act to add Section 2063 to, and to add Article 9 (commencing with Section 13575) to Chapter 2 of Division 3 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2367, as introduced, Gonzalez. Residential property insurance: wildfire resilience.

Existing law generally regulates classes of insurance, including residential fire and property insurance. Existing law defines the measure of indemnity for a loss under a property insurance policy. Existing law requires a person who controls a building or structure in, upon, or adjoining a specified wildfire-prone area to, among other things, maintain 100 feet of defensible space around the structure.

This bill would create the Wildfire Resilience Task Force, which would include the Insurance Commissioner, the Director of the Office of Emergency Services, and the State Fire Marshal, or their designees. The bill would require the task force to establish minimum standards for fire-hardened homes and communities, and would authorize the commissioner to promulgate regulations to implement specified exceptions to those standards. The bill would require an admitted insurer that offers or sells residential property insurance to, at a minimum, offer or sell the existing residential property insurance coverage it most commonly offers or sells to an applicant or insured who owns a residence that has an estimated replacement cost consistent with the insurer’s underwriting guidelines, meets the minimum standards
established by the task force, and was built before those standards were established.


The people of the State of California do enact as follows:

SECTION 1. Section 2063 is added to the Insurance Code, to read:

2063. An admitted insurer that offers or sells residential property insurance in this state shall, at a minimum, offer or sell the existing residential property insurance coverage it most commonly offers or sells to an applicant or insured if all of the following requirements are met:

(a) The applicant or insured owns a residence with an estimated replacement cost that is consistent with the insurer’s underwriting guidelines.

(b) The residence meets the minimum standards for a fire-hardened home established pursuant to Section 13576.

(c) The residence is within a community that meets the minimum standards for a fire-hardened community established pursuant to Section 13576.

(d) The residence was built before the development of the standards established pursuant to Section 13576.

SECTION 2. Article 9 (commencing with Section 13575) is added to Chapter 2 of Division 3 of the Insurance Code, to read:

Article 9. Wildfire Resilience Task Force

13575. (a) The Wildfire Resilience Task Force is hereby created.

(b) The task force membership shall include all of the following:

(1) The commissioner or the commissioner’s designee.

(2) The Director of the Office of Emergency Services or the director’s designee.

(3) The State Fire Marshal or the State Fire Marshal’s designee.

13576. The task force, in consultation with the Department of Forestry and Fire Protection and the Office of Planning and Research, shall establish both of the following:
(a) The minimum standards a dwelling shall meet to qualify as a fire-hardened home.

(b) The minimum standards a community shall meet to qualify as a fire-hardened community.

13577. (a) The commissioner may promulgate regulations to require insurers to incentivize wildfire mitigation actions by homeowners as part of insurance premiums.

(b) The commissioner may promulgate regulations to implement this article, including regulations to implement exceptions to the standards established pursuant to Section 13576 based on any of the following:

(1) If an insurer determines it has an overconcentration of risk in a particular region and provides the reasoning for the determination to the commissioner for consideration.

(2) If the commissioner determines, based on wildfire risk factors, that a residence is exposed to such an extreme wildfire risk that it severely undermines the impact of home hardening and community hardening efforts.

(3) If underwriting reasons, unrelated to the risk of wildfire loss, that an insurer applies generally to all properties to determine eligibility for coverage will be affected.