



Midpeninsula Regional  
OpenSpace

Midpeninsula Regional Open Space District

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February 4, 2020

Los Gatos Town Council  
110 E. Main Street  
Los Gatos, CA 95030

Dear Los Gatos Town Council,

I am writing on behalf of the Midpeninsula Regional Open Space District (Midpen) to respectfully urge a critical change to a proposed ordinance amendment to the Town of Los Gatos Ordinance *Code Section 4907 Defensible Space* that poses significant negative implications to public open space lands and the use of public tax dollars for the protection of private land interests, against public policy and at odds with existing legal requirements.

Midpen acknowledges the need for all jurisdictions, including the Town of Los Gatos, to review and update ordinances and practices to reduce the risk of wildland fires and improve public safety. Midpen has been engaging the larger community, neighbors, Fire Safe Councils, the Town of Los Gatos, Santa Clara County Fire, and Cal Fire as we develop a robust Wildland Fire Resilience Program. This Program will identify and prioritize regional fuel reduction projects in high fire danger zones for enhanced public safety and ecosystem resilience to reduce the risk of catastrophic wildfires in the region.

Annually, Midpen commits extensive staff time and resources to perform fuel management work to create defensible space fire clearance around structures; clearing encroaching vegetation along trail pathways and fire/emergency access roads; and maintaining fuel breaks along roadsides and preserve boundaries. This work is essential to protect open space and provide for public safety. Vegetation clearance protects publicly owned structures, provides public access, maintains emergency response routes, and allows opportunities for fire agencies to suppress fires. Over the past several years we have increased the amount of fuel reduction work we have performed in response to the catastrophic fires that have occurred in California.

Separately, to encourage neighbors to responsibly protect their structures and achieve the defensible space clearance zones recommended by CalFire, Midpen administers a simple use permit system that allows neighbors to enter Midpen lands to perform fuel reduction work. We strongly urge neighbors who need access to complete the full 100 feet of clearance to contact Midpen to receive their permit. Our permit system is consistent with state law, placing the responsibility of fuel clearance to protect structures on the owner. While it is highly desirable to achieve the full extent of defensible space around each structure, Midpen raises strong objections in shifting this responsibility and cost to the neighboring property owner when the adjacent structure is located less than 100 feet from the adjoining property line. Such a policy would place the burden of protecting private interests on adjoining neighbors, and in Midpen's case, it would place the burden on the public to pay for protecting individual private property.

ATTACHMENT 4

Two statutes referenced in the Town's proposed ordinance amendment specify that clearance beyond the property line may only be required when accompanied by findings that the clearing is necessary to reduce the risk of fire, 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. It is in keeping with this principle that Midpen operates its defensible space permit program. However, the proposed ordinance goes further by shifting the responsibility and cost for fuel management work to the adjoining property owner.

With our concerns in mind, Midpen offers two suggestions to revise the language of the proposed Town ordinance that ensures defensible space clearance zones are achieved without shifting the responsibility to adjoining property owners, which would result in public tax dollars bearing the burden to provide defensible space for privately owned structures.

Option 1: Add an exception for public agencies, so that individual homeowner responsibility is not shifted to taxpayers.

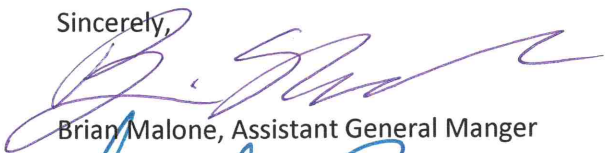
4907.3 Defensible space along property lines. Pursuant to Government Code Section 51182 and Public Resources Code Section 4291(a)(2): 1. When an occupied building is less than 100 feet from a property line and combustible vegetation on an adjacent parcel presents a fire hazard for the occupied building as determined by the Fire Chief or his/her designee then the owner of the adjacent parcel where the hazard exists shall be responsible for fuel management, including removal to the satisfaction of the Fire Chief or his/her designee. Notwithstanding the foregoing, adjacent parcels owned by government entities shall not be subject to this section.

Option 2: Allow the owner of an occupied building to enter onto adjacent property for the purposes of conducting fuel reduction with property owner permission.


4907.3 Defensible space along property lines. Pursuant to Government Code Section 51182 and Public Resources Code Section 4291(a)(2): 1. When an occupied building is less than 100 feet from a property line and combustible vegetation on an adjacent parcel presents a fire hazard for the occupied building as determined by the Fire Chief or his/her designee then the owner of the adjacent parcel where the hazard exists shall consent to entry by the owner of the occupied building for the purpose of creating defensible space prescribed by the Fire Chief or his/her designee. The adjacent property owner's consent may be conditioned on reasonable requirements, including but not limited to insurance coverage. The owner of the occupied building shall bear the financial responsibility for the cost of fuel management work associated with the protection of such building as well as the responsibility to conduct the fuel management work.

If the council does not wish to consider an amendment to the proposed ordinance at this time, we ask that the final adoption of this section of the ordinance be deferred for a month or two to give time for Town staff to discuss the issue with Midpen staff to see if appropriate language can be crafted to address our concerns while preserving the intent to allow Los Gatos homeowners to create defensible space around their homes. Thank you for your consideration.

Sincerely,



Brian Malone, Assistant General Manager



Ana Maria Ruiz, General Manager