

CALIFORNIA BOARD OF FORESTRY AND FIRE PROTECTION

RESOLUTION NO. 2020-2

RESOLUTION APPROVING A SUSPENSION ON LOCAL ORDINANCE CERTIFICATION PENDING ADOPTION OF STATUTORILY REQUIRED AMENDMENTS TO THE SRA FIRE SAFE REGULATIONS

WHEREAS, Since 1991, Public Resources Code section 4290 has required the State Board of Forestry and Fire Protection (Board) to adopt regulations, known as the Fire Safe Regulations, to implement minimum fire safety standards applicable to state responsibility area (SRA) lands; the Fire Safe Regulations (14 CCR § 1270 *et seq.*) apply to the perimeter and access to all residential, commercial, and industrial building construction in the SRA; and

WHEREAS, Pursuant Public Resources Code section 4290, subdivision (c), the Fire Safe Regulations do not supersede local ordinances that equal or exceed the minimum standards of those regulations; and

WHEREAS, Pursuant to the Fire Safe Regulations, a local jurisdiction may submit its local ordinance to the Board, and the Board may, in its discretion, certify a local ordinance as equaling or exceeding the Fire Safe Regulations when the local ordinance provides the same practical effect, in which case the local jurisdiction's ordinance shall be applied in lieu of the Fire Safe Regulations; and

WHEREAS, Pursuant to the Fire Safe Regulations, a certification is rendered invalid if subsequent amendments are made to the Fire Safe Regulations or local ordinance; and

WHEREAS, The Board must adopt amendments to the Fire Safe Regulations expeditiously to address new requirements imposed by Senate Bill 901 (Ch. 626, Stats. 2018), which will invalidate all local ordinance certifications within a matter of months; and

WHEREAS, The Board believes a temporary suspension on local ordinance certification is appropriate to avoid the unnecessary invalidation of local ordinance certifications issued between now and adoption of the statutorily-mandated Fire Safe Regulation amendments; and

WHEREAS, The Board acknowledges the unfortunate burdens to local jurisdictions that will result from being unable to seek and secure certification of its local ordinance for the duration of a temporary suspension; and

WHEREAS, Local ordinance certification is a distinct issue from the delegation of inspection authority to a local jurisdiction; certification merely provides clarity as to which standard – the local ordinance or the Fire Safe Regulation – serves as the basis for inspections; thus, a suspension on certifications does not impact a local jurisdiction's ability to seek or retain inspection authority of the applicable fire safe standards, as properly delegated pursuant to 14 CCR § 1270.05; and

WHEREAS, A temporary suspension on certifications does not affect or conflict with Public Resources Code section 4290, subdivision (c), and does not affect the applicability of a local ordinance, rule or regulation, to the extent such local ordinance, rule or regulation equals or exceeds the minimum standards in the Fire Safe Regulations pursuant to Public Resources Code section 4290, subdivision (c); and

WHEREAS, The Fire Safe Regulations would serve as the default standard for all local jurisdictions, and the Board’s certification is not statutorily required to preserve a local ordinance to the extent that it is at least “equal” to the Fire Safe Regulations, which would be satisfied where compliance with the local ordinance standard also simultaneously satisfies the Fire Safe Regulation as an identical or lesser-included standard.

NOW, THEREFORE, BE IT RESOLVED, That for the reasons set forth in the above Recitals, the Board will not consider any local ordinance for certification as equaling or exceeding the minimum standards as providing the same practical effect of the Fire Safe Regulation until the amendments to the Fire Safe Regulations in accordance with Public Resources Code section 4290 are adopted and take effect; and

BE IT FURTHER RESOLVED, That the Executive Officer shall notify relevant local jurisdictions of the temporary moratorium by posting this Resolution on the Board’s website and distributing copies of this Resolution, as appropriate.

Passed and adopted by the State Board of Forestry and Fire Protection at a regularly scheduled, noticed meeting on November 4, 2020, by the following vote:

Ayes: Gillless, Chase, Delbar, Husari, Jani, Los Huertos, Wade

Noes:

Absent: Wheelles

As certified on November 5, 2020, by:



Keith Gillless, Board Chair



Matt Dias, Executive Officer