



Office of the City Attorney

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** June 17, 2025

**Item Number:** 43a

**Item Description:** Modification and Adoption of Berkeley Fire Code Local Amendments

**Submitted by:** Farimah Faiz Brown, City Attorney

Supplements and clarifies the California Environmental Quality Act determination for the proposed ordinance.

ORDINANCE NO. 7,959-N.S.

REPEALING AND RE-ENACTING BERKELEY MUNICIPAL CODE CHAPTER 19.48  
(BERKELEY FIRE CODE)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

...

**Section 2.** California Environmental Quality Act Determination

Pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) (“CEQA”), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*) (hereinafter, “CEQA Guidelines”), City staff has independently studied the proposed Ordinance and has determined that the Ordinance is exempt from environmental review for the reasons stated below and as set forth in the staff report dated April 15, 2025.

- (a) The City finds that this Ordinance, in its entirety, is not subject to CEQA pursuant to the following categorical exemptions set forth in CEQA Guidelines:
- i. Sections 15304 (minor alterations to land) because the actions taken would involve changes in landscaping and including replacement of existing vegetation with fire resistant landscaping, as well as fuel management activities within 30 feet of structures, and would not involve removal of healthy, mature, scenic trees; the taking of endangered, rare, or threatened plant or animal species; or significant erosion and sedimentation of surface waters.
  - ii. Section 15307 (actions taken as authorized by law to assure protection of natural resources) because the actions would help protect natural resources by preventing wildfires by removing flammable materials and maintaining vegetation to minimize wildfire risk.
  - iii. Section 15308 (actions taken as authorized by law to assure protection of the environment) because the actions taken would help assure the protection of the environment by removing flammable materials and maintaining vegetation to minimize wildfire risk.

There are no significant or potentially significant adverse environmental impacts from this Ordinance.

- The Ordinance is a regulatory change that would not directly cause any reasonably foreseeable physical change, nor would it determine or cause any future development.
- Indirect physical changes would require vegetation management in areas with heightened risk to cause and spread wildfires. This would protect the environment and natural resources in the area governed by the ordinance, as well as throughout the City and region, by preventing and mitigating the spread of wildfire. Making wildfires less likely to start and spread protects the environment and natural resources by: preventing the destruction of habitat relied on by species in the area; maintaining air quality; biological resources, protecting cultural and

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historical resources, including historic structures, from destruction; preventing greenhouse gas emissions caused by wildfires; preserving recreation areas, including Tilden Park; and protecting tribal cultural resources from destruction by fire.

None of the exceptions to the categorical exemptions in CEQA Guideline section 15300.2 apply to this Ordinance, including but not limited to the exception for impacts due to unusual circumstances pursuant to CEQA Guideline section 15300.2(c).

- (b) The City also finds that this Ordinance is statutorily exempt from CEQA pursuant to Public Resources Code section 21080(b)(4) and CEQA Guidelines section 15269, as it consists of specific actions necessary to prevent or mitigate an emergency. Berkeley is situated in a fire dependent landscape that has experienced a significant wildfire in the immediate region every 20 years on average. While the wildfire problem we face today is partially a result of climate change, it is also a result of this systematic exclusion of fire from the landscape for over 100 years. This, along with our development of housing into fire prone areas of the state, including the East Bay Hills, has led to a substantial increase in the available fuel there is for a fire to burn. As the climate warms, it pulls more moisture from fuel making it more dry and increasing its ignition potential. As the rainy season continues to compress, it creates tinder dry fuel conditions, which are easily ignitable, overlapping with high wind events in the winter and spring that did not previously pose an ignition risk. Because we are not going to engage in a managed retreat from fire prone areas, we are forced to adapt existing communities to the modern threat of wildfire. The City finds that these environmental conditions, including changes caused by climate change, have resulted in increasingly frequent and severe wildfires in the State and region – causing the destruction of over 70,000 homes within the last ten years in California alone. The recent fires in Lahaina (HI), Ventura, Santa Barbara, Los Angeles, Napa, Sonoma, San Diego (CA) and in Boulder County (CO) resulted in severe environmental and societal impacts.

To address and reduce these wildfire risks, Governor Newsom issued an Executive Order (N-18-25) on February 6, 2025, which is intended to accelerate the adoption of regulations requiring some California homeowners to create “ember-resistant” zones immediately around their homes. The vegetation and environmental conditions in the area of Berkeley governed by this ordinance create a very high risk of a wildfire transitioning to a structure-to-structure conflagration that would threaten a large portion of the City. Strategically removing managing vegetation near residences structures in this area will help prevent or mitigate wildfire emergencies.

On March 1, 2025, Governor Newsom proclaimed a State of Emergency in the State of California due to the catastrophic wildfires in Los Angeles County, triggered by many of the conditions that exist in Berkeley today. The Proclamation called for critical fuel reduction projects and suspended CEQA for certain state agencies in recognition of the emergency situation. A number of local agencies have rapidly adopted new home hardening ordinances in response to this emergency.

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