

WUI VEGETATION CODE WORKGROUP

REGULAR MEETING

NOVEMBER 26, 2025

3:00 PM

Cypress Room – 2180 Milvia St. 1st Floor

Fire Chief's Representative – Asst. Chief Colin Arnold

Assistant Chief David Winnacker
Richard Illgen
George Perez-Velez

Eric Weaver
Margit Roos-Collins

AGENDA

Preliminary Matters

Call to Order

Approval of November 19 Minutes

Public Comment on Non-Agenda Matters

AGENDA MATTERS *All Regular agenda matters are for discussion and possible action.*

- 1. Action:** **Discussion and possible action on suggestions for the Resident Guide**

Written Materials: Draft List of Proposed Ideas with Context for the Resident Guide
- 2. Action:** **Communication to Council, prepare and review related correspondence**

Written Materials: DRAFT Letter from WUI Veg committee to City Council for their Dec. 2nd meeting

- 3. Action:** **Emerging evidence that informs both local climactic conditions and informs discussion on the presence of vegetation in zone 0.**
- Written Materials:** Letter to workgroup members about lead submitted by group member Margit Roos-Collins
- To reduce printing and paper use, documents listed below will be available in a binder for public access at the meeting:**
 LA Report to BOF Zone Zero Committee
 Options for reducing house losses during wildfires without clearing trees and shrubs, P. Gibbons, et al
 Excerpts from Dr. Michael Gollner communication to City Council and 2025 Article
 Fire Retardant and Fire Resistant Plants Excerpts, Douglas Kent, MS, MLA
 Science Summary by Dr. Travis Longcore
 Succulent Flammability Demonstrative Examples, Debra Lee Baldwin
 Looking for evidence of significant added fire risk to homes from adjacent plants during an ember storm or ground fire.
- 4. Action:** **Code Comparison**
- Written Materials:** Clean Draft of the new language
 Clean Draft of the old language
 Link to the [Fire Pathways Risk Assessment](#)
 Link to the [Berkeley Fire Hazard Severity Zones & CALFIRE LRA Map Update](#)
- 5. Action:** **Discussion regarding citations, penalties, and appeals process and reviewing differing perspectives on the enforcement approach (e.g., formal vs. informal).**
- Written Materials:** Memo and Documents Submitted to the City Attorney's Office by Group Member Richard Illgen
 BMC 1.28
 EMBER Enforcement, Page 3 (modified).
 Email regarding internal Administrative Citation Progress.
 Proposed Modifications of Berkeley Fire Code for WUI Appeals and Violations
 BFD WUI Division Inspection and Compliance Process Statement
- 6. Action:** **Agenda topics submitted by a member for consideration and discussion:**

State Fire Regulations
Excerpts from the Government Code on Fire Zones
Soils and Geology
Fire-resistant Vegetation
Eucalyptus and Other Dangerous Trees
Building Composition and Compliance
Compliance Costs
Review and Discussion of Submitted Reference Materials on
Wildfire Preparedness and Zone 0 Regulations

Written Materials: To reduce printing and paper use, all referenced documents will be available in a binder for public access at the meeting.

Clean Draft of the new language
Clean Draft of the old language
State Fire Regulations
Excerpts from the Government Code on Fire Zones
Firewise: How To Prepare Your Home For Wildfires
Elsevier, Landscape and Urban Planning article
NFFPA Preparing Homes for Wildfire
Reducing the Vulnerability of Buildings to Wildfire
Science Summary by Dr. Travis Longcore
Brentwood HOA Comments on Proposed Zone 0
Regulations
Zone 0 Won't Save Your Home from Wildfire

WORK GROUP REPORTS

Adjournment

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to the Wildland Urban Interface Division of the Berkeley Fire Department, wildfire@berkeleyca.gov 510-981-5620. Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: E-mail addresses, names, addresses, and other contact information are not required but, if included in any communication to a City board, commission, or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission, or committee for further information. Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at Berkeley Fire Department located at 2100 Martin Luther King Jr. Way Berkeley, CA.

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair-accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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I hereby certify that the agenda for this regular/special meeting of the Berkeley City's Disaster and Fire Safety Commission was posted at the front of the Division of Training, 997 Cedar Street, as well as on the City's website, three days prior to the scheduled Commission meeting.

SECRETARY SIGNATURE

*Colin Arnold*

## Berkeley's FireSafe Guide for the landscaping around your home

### Our Shared Goal

The Berkeley Fire Department is your best partner and resource in understanding wildfire risk and building a plan that feels right for your home.

This guide is designed to help you move toward compliance without unnecessary stress — balancing wildfire safety with the beauty, comfort, and sense of community that make Berkeley such a special place to live.

### Resident Guide for implementing defensible space for homes at risk of wildfire

This guide helps residents and property owners develop best practices for their homes when it comes to vegetation, and is designed to cater to individual preferences, such as pollinator friendly choices, erosion concerns, or native species to our region. While this guide is a good reference for anyone, there are specific rules for vegetation based on where you live, and some properties are REQUIRED to follow parts of this guide when it comes to what they plant around their home. Visit [BerkeleyFireSafe.org](https://BerkeleyFireSafe.org) to learn more, and see what the rules are for where you live. This should be widely available to both the affected zones, and those who may have a vested interest.

### Why Berkeley's Approach Is Different

Why are the rules for that different in Berkeley than at the state level?

Berkeley includes hillside areas bordering open space and regional parkland, which have a high wildfire risk (wind-driven embers, steep slopes, older forest/vegetation). The local fire department has identified those risks, and the ordinance is tailored accordingly. Local conditions justify more stringent measures under local authority: the city code amendment states findings of “local conditions ... requiring more stringent standards than those provided by the 2022 California Fire Code.”

In 2025, the Berkeley City Council determined that, based on the risk of wildfire loss faced by residents, especially those along the eastern edge of the city, that there was enough information to act and require strict vegetation rules in certain areas. These rules are designed to reduce the number of structures that ignite when a wildfire encroaches on the border of our city. These rules are designed to prevent embers, cast well ahead of a fire, from creating sources of ignition that might ignite a home.

Berkeley's hillsides have steep slopes, heavy vegetation, and seasonal winds — conditions that create some of the highest wildfire ember risk in the Bay Area.

Rather than wait for statewide rules, Berkeley chose to act now.

- **Local focus:** The fire code ordinance targets the areas where science and history show the highest risk.
- **Emphasis on vegetation:** Managing plants and landscaping gives immediate risk reduction while residents pursue home hardening measures as they can, without requiring expensive reconstruction.
- **Balanced enforcement:** The city's goal is education and support — not punishment — so homeowners can plan and adapt at their own pace.
  - **Half the Battle:** When combined with home hardening, defensible space may reduce the risk of ignition from wildfire by as much as 80%. Tackling vegetation challenges now allows homeowners to get started while they take advantage of the free home hardening programs available now, and they come up with a game plan for the future.

Why is it important to do this?

When residents follow the EMBER standards — especially creating that first five-foot “Zone 0” buffer — they're not just protecting their own homes; they're helping firefighters protect the entire neighborhood.

#### 1. Helping the Fire Department Fight the Fire

- **Reduces ignition points:** Most homes lost in urban-interface fires don't burn from direct flames — they ignite from *wind-blown embers*. By clearing combustible materials near walls, decks, or fences, you drastically cut the chance that your home will ignite in the first place.
- **Creates defensible space:** When one home resists ignition, it becomes a *firebreak* that slows the spread to others. That gives firefighters critical time to deploy resources where they're most needed.
- **Improves firefighter and resident safety:** Crews working in dense, overgrown areas face extreme heat, unpredictable flare-ups, and blocked access routes. Ember-resistant zones and thinned vegetation make it safer to operate equipment, move hose lines, and defend structures.

In short: every compliant property becomes a safer, more defensible position for the fire

crews protecting it. When fewer homes are igniting, responders can focus on the homes that are threatened. Slowing the spread also helps give people more time to get out.

## 2. Protecting Those in the Highest-Risk Areas

Berkeley's hillsides are at the intersection of steep topography, heavy vegetation, and seasonal wind patterns — the *perfect mix for ember storms*.

When residents in these highest-risk zones follow the EMBER guidance:

- They reduce radiant heat and ember load that can threaten adjacent homes downhill.
- They protect evacuation routes by minimizing roadside vegetation ignition.
- And they allow firefighters to concentrate on containment, rather than defending every individual structure under impossible conditions.

The work you do immediately around your home is the single most effective thing you can do to stop your home from igniting from wildfire. And if your home doesn't ignite, your neighbors home is also much better protected. Furthermore, defensible space help the fire department do their jobs after the fire starts. While doing this work on one property helps stops embers and wildfire from igniting that home, because our homes are so closely spaced, we need to rely on our neighbors to be proactive as well in order to effectively protect ourselves.

This is about re-evaluating our relationship with the environment we are in, and evolving with it. We have a Mediterranean climate. We can't force another reality. How to we balance this with encouraging the environment around us where we can (birds, etc). Berkeleyside had a thoughtful article that looked back on how landscaping choices have evolved in Berkeley:

Mediterranean climates like Berkeley's are found in only 2% of the earth's land mass. Our mild summers and inexpensive water pumped from Sierran rivers have made it possible to grow plants from a much broader range of climates and to successfully imitate garden styles developed for rainy summer locales. Part of learning to live sustainably in Berkeley is learning to cherish gardens that need less water. Mediterranean gardens are a good source of inspiration as they often include hardscaping adjacent to a home.

Living with the Environment, Not Against It

Berkeley's Mediterranean climate — dry summers, mild wet winters — means we live in a fire-adapted ecosystem.

The EMBER initiative asks us to re-evaluate our relationship with the landscape:

- To design gardens that are *beautiful and resilient*: drought-tolerant, low-fuel, and still alive with pollinators and birds.
- To embrace Mediterranean-style hardscaping and native plant palettes that reduce fire risk while maintaining character.
- To balance *ecological health* with *human safety*.

The Berkeley Fire Department is your partner in this. They want to help you:

- Understand what to do,
- Make a plan that fits your property and budget,
- And feel *good* about how your home looks and how safe you feel living there.

Use the resident guide as a personal roadmap — one that balances beauty, ecology, and safety — and helps ensure that when the next fire comes, your home, your neighborhood, and your firefighters all stand a better chance.

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## Here's How You Get to Compliance

Reaching compliance with the EMBER standards isn't about passing or failing — it's about *progress*. The City of Berkeley Fire Department is here to help you every step of the way.

### 1. Start with a Self-Inspection

Begin by using the EMBER Self-Inspection Checklist.

Walk around your property and note:

- Combustible materials within 5 feet of your home
  - Overgrown vegetation near walls, decks, or fences
  - Items stored under eaves or decks
  - This helps you see where you stand before scheduling an inspection. For any items that you have questions or concerns about, save them for the inspection with the Inspector.
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2. Schedule an assessment with a FireWise leader, if desired.

Some people would like to hear directly from the Fire Department, in which case, skip to the next step and reach out! Others might want to hear from their neighbors who have been specifically trained to support the effort, and often have additional creative solutions to the challenge that can meet the goal of reducing risk while also maintaining the unique character of the home. Your local FireWise leader can connect you with an Ambassador to meet with you.

3. Schedule an Inspection

Next, request an Inspection from a Fire Department inspector.

Inspectors will:

- Walk your property with you (or on their own, with your permission)
  - Identify the highest-risk areas and prioritize actions
  - Note the highest priority items as violations to be addressed within 2 months
  - Help create a personalized plan with benchmarks to meet each cycle
- This plan focuses on what matters most first, so you can make steady progress without feeling overwhelmed. Items on the personalized plan will not be flagged as violations if managed within the established timeline.

This form documents:

- What you've already done
- What remains to be addressed
- Your target timeline for full compliance

It serves as your roadmap — and your record of effort and progress.

Some owners may have practical difficulties with meeting the code. This may be due to a number of reasons, and property owners with these concerns can address them with an inspector to determine if a modification of the code is required. One of the most common modifications is for time; inspectors and responsible parties agree on a timeline for compliance that spans multiple inspection cycles.

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5. Work Toward Full Compliance (This is where we add the three year possible compliance plan )

The Compliance and Enforcement process varies depending on your area's risk level. Generally:

- The first action items identified in your plan should be completed within 60 days of your inspection.
- Inspectors will re-check progress and help you stay on track. Its important to take action after the inspection so that you don't lose momentum, or worse, become subject to fines.
- Visit [BerkeleyFireSafe.org](https://www.berkeleyfiresafe.org) to learn about services, grants, and other programs that can help you make progress, often for free. From there, you can also learn what people are doing around you, who they are using to help them, and more!
  - Continued communication and visible progress keep the process supportive, not punitive.

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Remember:

Fire inspectors aren't just enforcing rules — they're partners in protection. Their goal is to make your property safer and help you feel confident about your next steps.

Each improvement you make strengthens your neighborhood’s resilience and gives firefighters a safer, more defensible environment to work in when it matters most.

## Living Safely in Berkeley’s Fire Environment

### 1. Why This Matters

This isn’t just about compliance — it’s about re-evaluating our relationship with the environment we live in. Berkeley’s Mediterranean climate — mild summers, dry conditions, and vegetation adapted to periodic fire — is unique and beautiful. Living here means learning to coexist with this landscape safely and sustainably. That means choosing water-wise, fire-smart landscaping and creating defensible space that balances safety with the natural beauty of our neighborhoods. It also means preparing for, and EXPECTING the natural presence of fire that this landscape has been dependent on since long before we built homes in it.

The work you do immediately around your home is the single most effective thing you can do to stop your home from igniting during a wildfire.

When your home doesn’t ignite, your neighbor’s home is also better protected — and together, we create a stronger, safer community.

While taking steps on a single property helps reduce the risk of ember ignition, our homes are often closely spaced, and fire does not respect property lines. To effectively protect our community, we need to rely on one another to act.

Areas for further discussion:

NEED the wind chart and description to explain why the eucs aren’t the backstop to the problem (Need DW)

The WAMMR process and how to follow it

- o What if I need more time vs.
- o What if I want a technical modification

- o What if I have practical difficulties, vs. What if I just need more time?+
- My neighbor's happy to remove the plants but can't afford to do this work. Can I contribute to my neighbors' work instead of removing my prized shrubs?
- Can I remove a big juniper, cypress, pine, or eucalyptus from my yard instead of the plants closest to my house?
- Can I substitute home hardening and hardscaping?

How can I handle erosion, what do I do if the erosion issue is large enough that following the fire code will result in soil instability. Also, stormwater issues and how to handle.

Is there a reputable landscape architect or soils engineer that could provide a framework for how to explore whether you have erosion concerns. What is the best practice to reduce risk without increasing erosion concern. How to address stormwater management while also addressing fire concern.

If you have concerns, bring them up with an inspector to develop a path forward

Links to FireSafe Berkeley

BFD Site

BFSC Site

FireWise Comtes

DFSC

What is Defensible Space

Where does my responsibility end and my neighbors start?

Surely it can't be okay for a neighbor's future choices to impose a larger Zone 0 on my yard?!

What Is Zone 0?

Zone 0 is the first 0–5 feet around your home or any structure — including decks, fences, sheds, and garages.

This small area is the most critical zone in wildfire defense because most homes ignite from embers, not direct flames.

Wind-driven embers can travel miles ahead of a wildfire, landing in this space and igniting anything that burns — mulch, leaves, wooden fences, or furniture. Once the fire starts this close, it can easily spread to the structure itself.

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### How Does It Affect Me?

Zone 0 is where your home’s safety begins. If this area is clear of combustible materials, your home is far less likely to ignite during a wildfire.

Because Berkeley’s neighborhoods are dense, your Zone 0 directly affects your neighbors, too. When one home ignites, radiant heat and flying embers can quickly spread fire from house to house.

By maintaining Zone 0:

- You dramatically reduce your personal fire risk.
  - You protect your neighborhood and first responders.
  - You help buy time for safe evacuation and coordinated firefighting.
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### What Do I Do About It?

The goal in Zone 0 is to make it “ember resistant.”

That means removing or replacing anything that could easily catch fire. Here’s how:

Use our self-inspection checklist to help you determine what to do.

Then, get creative with your new space:

- Use noncombustible materials like gravel, pavers, or stone instead of mulch.
- Choose low-growing, fire-resistant plants like succulents or native species that retain moisture outside of the 5 foot perimeter
- Maintain a clean and clutter-free area within that 5-foot perimeter.
  - Consider unique hardscape patterns that work with your landscape, and not just a hard perimeter around your home.

- Consider non-combustible art, water features, or small plants in 5 gallon, non-combustible containers
- Create social sitting spaces that look out at your yard using metal furniture.
- 

Maintain:

- Regularly clear debris buildup, especially before fire season peaks (June–October).
  - Keep fences, decks, and siding in good repair to prevent ember intrusion.
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### What Happens If I Don't Do Anything?

Ignoring Zone 0 requirements increases your risk — and everyone else's.

If your home still has combustible materials right up against it:

- Embers can ignite your property, even if the main fire is blocks away.
- Firefighters may not be able to defend your home safely if vegetation or materials make it too dangerous to approach.
- You may receive a notice of violation and be required to make corrections within a set time frame under the city's fire code.

But more importantly — doing nothing puts your home, your neighbors, and your community in greater danger during wildfire events.

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### Special Circumstances

Some people may be willing to take extra steps elsewhere in order to keep something that might otherwise be a hazard, or violation of the code; say, a single small tree in zone 0, or a dense collection of native plants in zone 1.

These property owners will want to demonstrate that they can meet the intent of the code without the specific language within it. For properties with highly desirable attributes affected by the code, there is a process called the Wildland Alternate Means and Measures Record.

- o The applicant needs to identify what they are asking to apply this process to

- o The applicant needs to submit evidence demonstrating specific standards that they are applying to the unique setting that provides the same practical effect as the established code.

Examples might be additional hazard reduction in surrounding zones, home hardening measures that exceed the minimum standards of the code, or use of materials that are shown to be non-combustible through testing.

- o Go [HERE](#) for more information

What CAN I do with vegetation in a given zone?

When working from the structure out, consider a hardscape area that modulates between 5 feet from the home and further, rather than a hard line at exactly 5 feet. In zone 1, make free use of low growing groundcover between shrubs, and strike a balance between single, larger species of shrubs and small trees, and groupings of smaller plants. Use paths through the landscape to reduce the ability of fire to travel quickly towards the home. For larger groupings of shrubs, create visual space and reduce fire risk by building in additional, low growing ground cover between the shrub group and the structure.

This also helps with runoff or erosion concerns

How do I:

Make sure my tree has adequate spacing to the structure (walls, roof, etc)

What is COMBUSTIBLE? What isn't?

Why cant I have succulents within 5'

Where do I put my car

Hedges to Fences

If I cut down my hedge, I'll lose the outdoor privacy between my house and my neighbor. What can I do to replace that privacy? Is the building department going to allow higher fences now?

Fence: range of approaches:

Low end: metal posts and wire, hog wire, chain link,

Medium: HardieBoard and steel supports – can use for privacy fencing

Higher: Corten steel panels, wrought iron, aluminum and steel designs. Rock, stucco, or brick walls (kept low in Berkeley for earthquakes)

When it comes to gates: can leave the wooden piece attached to the house. Substitute a metal panel on either side of a metal gate for first five feet.

Suggestions for replacements for common combustible/plastic items around the home

Fence

Shed

Compost Bins: Models that are rotating bins up on metal legs are good.

Hose

Trash Cans: These are a common cause of ignitions during ember storms. They should be kept outside of zone zero, or stored in a well designed container that can withstand ember and direct flame.

Emergency Supply Shed: a metal job box works well for this – air and water-tight.

Yard equipment: We often lean tools against the least visible side of the house or put under the deck or in a shed [plastic playsets and pools, wheelbarrows, seed spreaders, lawnmower]. When these tools have combustible parts like wood or plastic, consider replacing them or moving them to somewhere else.

No I have to remove my deck.

NO. But if its attached to the structure, it need to have the 5' zone incorporated around it if it is combustible (i.e. not stone, concrete, etc.)

FAQs

Quick QR card that links back to the website.

Link from FD website

What can I do about trees on my property, and especially eucalyptus.

Elements that can add to the appeal of Zone 0 landscaping:

Recirculating, solar-powered fountains.

A metal bench with bright pillows.

Pebble and stone slab walkways (with a few marbles mixed in for delight?) – or brick paths or decomposed granite or concrete.

Tiled outdoor spaces with plants in terracotta or ceramic pots.

A space expanded out from Zone 0 enough to include a metal dining table and chairs; it doesn't need to be a straight line at 5' from the structure, but can meander out into zone 1 to add interest.

DRAFT Letter from WUI Veg committee to City Council for their Dec. 2<sup>nd</sup> meeting

NOTE: As promised, I've turned my concerns into a letter format and of course would love it if you all agree about all of this, but I make no assumptions that you do. Also, you may have concerns that I've inadvertently omitted.

Margit

November 26, 2025

Berkeley City Council and Mayor Adena Ishii

Dear Mayor Ishii and City Council,

On October 1<sup>st</sup>, the WUI Vegetation committee developed a letter of transmittal to accompany the revised EMBER language that went to the City Council two weeks ago. It included significant caveats about the limits to what we felt we could properly work on in the absence of the state's finalizing its own Zone 0 rules, since at the time, we believed Berkeley's rules could only be stricter or as strict as the state's. Our transmittal letter also called out additional issues we needed time to address. We wrote it so early in October because that was when our work for this triennial Fire Code review had to be complete and go to the building department for review and coordination in order to meet the end of year deadline for Council review and adoption.

The recently signed AB 1455 may now allow us to consider whether there are less stringent approaches that might better fit any local conditions. But we just learned about that law recently.

We are currently expected to sunset as a committee at the end of this year. We are writing to bring you up to date on some issues that we would like you to consider in order to improve the effectiveness of the city's Zone 0 effort and also writing to mention several areas that might benefit from additional work by this committee or any successor group.

### **Changes and coordination that could improve the effectiveness of the city's Zone 0 efforts**

Please consider how best to approach the following issues:

- People who apply to get permits for home hardening work currently can be subject to expensive additional requirements for home improvements not directly related to hardening. Such linkages in permitting serve a valuable function in bringing homes up to current codes in connection with ordinary remodeling. However, given the urgency of hardening and how expensive some of the hardening measures can be in their own right (such as switching from single to double pane windows), we request that the city council pursue exempting home hardening permits from any such linkages.

- The Zone 0 ordinance does not allow combustibles items such as plastic trash bins and recycling bins to be in the first five feet from a home in the VHFHSZ. However, given the small minimum lot setbacks in dense Berkeley, there are people who lack obvious places to keep their bins further from their houses. We wonder whether Public Works and the Ecology Center can be tasked with finding metal bins for the city. As the state gets deeper into fire-proofing, the demand should create a market for non-combustible bins if they do not already exist.
- Wood shake roofs are well-established as a fire hazard not only to one's own house but also to one's neighbors' homes, because of the firebrands they generate when they (easily) ignite. Yet Berkeley continues to allow people to keep their shake roofs indefinitely, so long as, when new shingles are required, they never replace more than 49% in a 5 year period. This follows an unsuccessful attempt to ban them after the 1923 fire. People have amply demonstrated their willingness to keep their shake roofs viable through serial partial replacement. It is beyond time to ban any repair or replacement so the roofs phase out as the shingles wear out. Please do not delay this important revision to the Building Code any longer.
- The City of Berkeley has its own Vector Control Program in the Environmental Health Division. Vector Control inspectors examine homes for holes through which rodents could pass. Some of these are easily filled. Others involve locations where ventilation is useful or filling is impractical. For those sites, it would be very helpful if Vector Control recommended 1/8" or 1/16" mesh instead of the standard 1/4", since only the smaller sizes keep embers out. Please ensure that any necessary communication and coordination occurs so that this change is made. It may involve a change to building code, since 1/4" mesh allows better ventilation than the smaller sizes.
- People will be required by Zone 0 to remove some very tall shrubs, some of them 15 feet high, that have provided valuable privacy to both sides of property lines even from the upper stories. It could help with acceptance of the change if the Building Department would publish guidelines to what the required showing would be in order for it to grant a building permit and height variance for a comparably tall metal structure which could support a vine or be decorative in its own right.
- There are people in the VHFHSZ who are tapped out financially, including people who are too young for the city's elderly financial assistance and have incomes too high for the city's low income assistance. They include recent purchasers with large mortgages, taxes and insurance premiums and childcare payments. DO WE HAVE AN ASK ON THE PERSONAL FINANCE FRONT, BEYOND WHAT'S ALREADY BEING DONE TO FIND AND DISTRIBUTE MONEY AND USE MODIFICATIONS TO PHASE IN WORK AT A MANAGEABLE PACE? I don't, but this is a placeholder in case someone else does.

**Work that remains to be done, which we believe is best done by this committee with an extension of time.**

- Our first charge was to clarify the new WUI vegetation language in the Fire Code and help with language in the guidance docs. The shrub language is clear on its face but the rationale and desired end result are confusing and seem to contradict other guiding principles directly. We didn't touch it because it was set by the state. Now, with AB1455, potentially the committee should explore the rationale and desired outcome and work to express those clearly, including potential to more coherently reconcile the current shrub separation requirements with the prohibitions on creating erosion issues. At our behest, Colin Arnold requested clarification from the city attorney about how to prevent and minimize any city and homeowner liabilities from erosion issues that arise from following Zone 0 clearance mandates on sloped lots. Once we have clarity about that issue, we would like the opportunity to address the language in the ordinance to make respective responsibilities and vegetative options clearer.
- There are several citizen members of our committee who are concerned that the enforcement provisions of the Fire Code may be inappropriate in the context of mandated removal of groomed vegetation. There are concerns that in this context, some of the enforcement measures could make the ordinance vulnerable in judicial review. The committee is currently in the process of seeking feedback through Colin Arnold from the city attorney about these concerns. When she addresses them, we would like the opportunity to meet, discuss, and potentially propose some alternative or supplemental enforcement mechanisms which some committee members believe would be better adapted to the unique circumstances of these new requirements for yards.
- The state's Board of Forestry Zone 0 committee has announced its intention to release emergency Zone 0 regulations by February or March. This committee would like to be authorized to consider whether Berkeley's ordinance needs to be changed to harmonize with those emergency regulations and, where there are differences between the state and local approaches, whether any aspect of the state approach would be preferable for this community, considering its severe vulnerability to fire and also the potential value of implementing the least controversial measures as quickly as possible.
- We have just completed enough of a research review to determine that there does not appear to be publicly available research directly examining the impact of an ember storm on ordinary levels of dead plant duff or debris next to a home, absent mulch, and the effects of that interaction on nearby foundation plantings. For an ordinance focused on reducing the risk from ember storms, this poses obvious challenges. That said, it also seems clear from the research that virtually all plants can burn (perhaps excepting succulents though that has not been proven to Fire

Code standards) and that there's clear benefit to creating separation between the ember-vulnerable species allowed in Zone 1 and the sides of a house. We are beginning the process of navigating what AMMRs might allow by way of near-house vegetation and how to make that clear to the public. This work is central to the mission of the Zone 0 ordinance and to our mission to bring clarity from a lay perspective. We request your authorization to continue.

- Lastly, there is at least one member of the committee concerned that the ordinance may need to be structured to incentivize persons with pre-1950s, painted homes to fully cover the soil when they remove vegetation from Zone 0. This would be in order to reduce the potential exposure of young children to lead-contaminated soils, which concentrate in the dripline of houses. We have not yet taken up this issue but should be able to do so soon. For more information, please see the Alameda County Lead Poisoning Prevention Program website at <https://www.achhd.org/leadpoisoning/soil.htm>

Regards,

Colin Arnold (correct title)  
Dave Winnacker (correct title)  
Richard Illgen  
George Perez Velez  
Margit Roos-Collins  
Eric Weaver

Nov. 20, 2025

Dear fellow WUI Veg committee members,

I request that we give attention at one of our upcoming meetings to the issue of whether we can think of a way to amend the local ordinance to incentivize owners of pre-1950s, painted homes to fully cover the soil in their driplines (essentially the same gap as Zone 0's five feet) in order to minimize possible early childhood lead exposure.

The cheapest way to comply with Zone 0 now is to rip everything out and leave bare dirt or put stepping stones on it; we need a way to incentivize keeping the ground covered, just as the Alameda County Lead Poisoning Prevention Program urges, at <https://www.achhd.org/leadpoisoning/soil.htm>:

In a survey of 292 soil samples collected from yards with bare soil in Alameda County between 2009 through 2011, 97% were determined to contain over 80 ppm, the level at which the CalEPA Office of Environmental Health Hazard Assessment has determined could raise a child's blood lead level. Over 60% of the bare soil samples contained more than 400 ppm of lead, which Federal agencies consider a lead hazard in play areas. And over 21% of the samples had over 1,000 ppm of lead, the level defined by the State as hazardous waste.

Children love to play outside, and many like to play in the dirt. When kids play in the dirt, they inevitably get their hands and toys dirty. If hands or toys with lead-contaminated soil on them make their way into a child's mouth, then the child can be exposed to lead. This can easily happen through normal hand to mouth behavior.

Covering bare soil makes a big difference.

Instead of testing, another option is to assume your soil has lead, especially if it is next to an older building, busy roadway or in an industrial area.

If your soil has lead or if you're just not sure, the most common approach is to create a barrier between the soil and your child. There are a number of ways to create these kinds of barriers. If you cover bare soil with landscaping, it will help to prevent people from being exposed to lead. This can be accomplished by planting sod in lawn areas, and placing ground cover or mulch in bed areas.

Whenever loose material like sand or wood chips is put down over contaminated soil in a traffic or play area, a weed-block fabric should be placed under it and at least six inches of the covering material placed. Watering and maintenance are crucial to keeping your garden lead safe.

Shrubs can be used as a barrier; for example, a row of junipers along the house tends to keep kids from playing in the high risk area next to the house. A fence can do the

same thing. It is a good idea to create a safe play area like a sand box, to give kids an alternative place to play, away from contaminated soil.

Also be aware of structures in the yard that may be a lead hazard, such as an old garage with peeling paint. For more information visit our page on reducing [lead hazards in paint and soil](#).

<https://www.achhd.org/leadpoisoning/soil.htm>

I'll be interested in hearing your thoughts. Note the recommendation to plant junipers along the foundation. We might want to reach out to them, if we have another prickly bush to suggest which is less likely to burn.

Cheers,  
Margit

ADOPTION OF THE 2025 CALIFORNIA WILDLAND-URBAN INTERFACE CODE AND CONSOLIDATING BERKELEY'S WILDLAND URBAN INTERFACE (WUI) FIRE CODES INTO A NEW BERKELEY MUNICIPAL CODE CHAPTER 19.49, AND REMOVING PREVIOUS WUI CODE REFERENCES FROM BERKELEY BUILDING CODE (BMC CHAPTER 19.28), BERKELEY RESIDENTIAL CODE (BMC CHAPTER 19.29) AND THE BERKELEY FIRE CODE (BMC CHAPTER 19.48)

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

**Section 1.** That Berkeley Municipal Code Chapter 19.49 is hereby introduced:

### **Chapter 19.49**

#### **BERKELEY WILDLAND-URBAN INTERFACE CODE**

**Sections:**

- 19.49.010 Adoption of the California Wildland-Urban Interface Code**
- Article 1. Scope and Administrative Provisions**
  - 19.49.020 Adoption of Chapter 1 Scope and Administration**
- Article 2. Definitions**
  - 19.49.030 Amendments to Chapter 2 Definitions**
- Article 3. Wildland-Urban Interface Areas**
  - 19.49.040 Amendments to Chapter 3 Wildland-Urban Interface Areas**
- Article 4. Wildland-Urban Interface Area Requirements**
  - 19.49.050 Amendments to Chapter 4 Wildland-Urban Interface Area Requirements**
- Article 5. Special Building Construction Regulations**
  - 19.49.060 Technical Amendments to Chapter 5 Special Building Construction Regulations**
- Article 6. Fire Protection Requirements**
  - 19.49.070 Amendments to Chapter 6 Fire Protection Requirements Including Defensible Space regulations**
- Article 7. Referenced Standards**
  - 19.49.080 Amendments to Chapter 7 Referenced Standards**
- Article 8. General Requirements**
  - 19.49.090 Adoption of Appendix A with amendments**

**19.49.010 Adoption of the California Wildland-Urban Interface Code.**

The California Wildland-Urban Interface Code, 2025 edition, as adopted in Title 24 Part 7 of the California Code of Regulations, including Appendix A is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley (“City”).

**Article 1. Scope and Administrative Provisions**

**19.28.020 Adoption of Chapter 1 Scope and Administration**

Chapter 1 of the 2025 California Wildland-Urban Interface Code is partially adopted with adopted sections below. (Sections adopted by the State Fire Marshal remain unless modified below.)

**CHAPTER 1 SCOPE AND ADMINISTRATION**

**SECTION 101 – SCOPE AND GENERAL REQUIREMENTS**

**101.1 Title.** These regulations shall be known as the Berkeley Wildland-Urban Interface Code, hereinafter referred to as “this code”.

**101.3.1 Application.** *New buildings and structures, additions, alterations, repairs and re-roofs located in any Fire Hazard Severity Zone or Wildland-Urban Interface (WUI) Fire Area designated by the enforcing agency constructed after the application date shall comply with the provisions of this code. This shall include all new buildings and structures, additions, alterations, repairs and re-roofs with residential, commercial, educational, institutional or similar occupancy type uses, which shall be referred to in this code as “applicable buildings,” as well as new buildings and structures, additions, alterations, repairs and re-roofs accessory to those applicable buildings.*

**Exceptions:**

1. *Group U occupancy accessory buildings or structures of any size located at least 50 feet (15 240 mm) from an applicable building on the same lot.*
2. *Group U occupancy agricultural buildings or structures, as defined in Section 202 of the California Building Code of any size located at least 50 feet (15 240 mm) from an applicable building.*
3. *New accessory buildings and miscellaneous structures specified in Section 504.11 shall comply only with the requirements of that section.*

**101.3.1.1 Application date and where required.** *New buildings or structures for which an application for a building permit is submitted on or after July 1, 2008, or buildings and structures, additions, alterations, repairs and re-roofs for which an application for a building permit is submitted on or after July 1, 2008 located in any Fire Hazard Severity*

*Zone or Wildland-Urban Interface Area shall comply with this code, including all land designated as a wildland-urban interface area by the City of Berkeley.*

**101.5 Additions, ~~or~~ alterations or re-roofs.** Additions, ~~or~~ alterations or re-roofs shall be permitted to be made to any building or structure without requiring the existing building or structure to comply with all of the requirements of this code, provided that the additions, ~~or~~ alterations or re-roofs conforms to that required for a new building or structure.

**Exception:** Provisions of this code that specifically apply to existing conditions are retroactive.

Additions, ~~or~~ alterations or re-roofs shall not be made to an existing building or structure that will cause the existing building or structure to be in violation of any of the provisions of this code nor shall such additions or alterations cause the existing building or structure to become unsafe. An unsafe condition shall be deemed to have been created if an addition, ~~or~~ alteration or re-roof will cause the existing building or structure to become structurally unsafe or overloaded; will not provide adequate access in compliance with the provisions of this code or will obstruct existing exits or access; will create a fire hazard; will reduce required fire resistance or will otherwise create conditions dangerous to human life.

**102.4.1 Conflicts.** Where conflicts occur between provisions of this code and the referenced standards, the provisions of the most restrictive referenced standards shall govern.

**102.4.2 Provisions in referenced codes and standards.** Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of the referenced code or standard, as applicable, shall take precedence over the provisions in this code.

## **SECTION 103 – CODE COMPLIANCE AGENCY**

**103.1 Creation of enforcement agency.** The Berkeley Fire Department is hereby created and the official in charge thereof shall be known as the Fire Chief. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

**103.2 Appointment.** The Fire Chief shall be appointed by the City Manager.

**103.3 Deputies.** In accordance with the prescribed procedures of the City of Berkeley, the Fire Chief, hereinafter referred to as the code official, shall have the authority to appoint a Deputy Fire Chief, Fire Marshal, Fire Plans Examiners and other related technical officers, inspectors and other employees. Such employees shall have powers as delegated by the code official. For purposes of this code, the term “code official” shall also include their designees.

## **SECTION 104 – DUTIES AND POWERS OF CODE OFFICIAL**

**104.7 Official records.** The code official shall keep official records as required by Sections 104.7.1 through 104.7.5. Such official records shall be retained for not less than 5 years or for as long as the building, structure or activity to which such records relate remains in existence, unless otherwise required for a longer period by the retention of public record policy of the city.

**104.7.2 Inspections.** The code official shall keep a record of each inspection made, including notices of violations issued, notices and orders issued, administrative citation warning letters issued, citations issued and appeals received showing the findings and disposition of each.

**104.7.5 Fees.** The code official shall keep a record of invoices issued, fees collected and fees refunded in accordance with Section 108.

**104.9.1 Materials and equipment reuse.** Materials, equipment and devices shall not be reused unless such elements are in good working order with proper reports and tests justifying the condition, labeled and graded as required and expressly approved by the code official.

**104.14 Liability for Damage.** The expenses of fighting fires and securing emergencies, which result from a violation of this code, Chapter 6.15.030 of the Berkeley Municipal Code (“Unauthorized barbecues and fire on public property”), Sections 13000-13011 of the California Health and Safety Code, Sections 4421-4446 of the California Public Resources Code, or Sections 451, 451.5, 452 or 455 of the California Penal Code is a charge against the person(s) whose violation of the code section(s) caused the fire. Damages caused by such fires shall constitute a debt of such person(s) and shall be collectable by the code official in accordance with Section 104.14.1 (“Expense of securing emergencies”) of this code.

**Section 104.14.1 Expense of securing emergencies.** The expense of securing any emergency that is within the responsibility for enforcement of the code official as given in Sections 104.1 is a charge against the person who caused the emergency. Damages and expenses incurred by any public agency having jurisdiction or any public agency assisting the agency having jurisdiction shall constitute a debt of such person and shall be collectible by the code official for proper distribution in the same manner as in the case of an obligation under contract expressed or implied. Expenses as stated above shall include, but not be limited to, equipment and personnel committed and any payments required by the public agency to outside business firms requested by the public agency to secure the emergency, monitor remediation, and clean up.

## **SECTION 105 – PERMITS**

**105.3 Work exempt from permit.** Exemption from the permit requirements of this code or in other Parts of Title 24 shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

The code official is authorized to stipulate conditions for permits. Permits shall not be issued where public safety would be at risk, as determined by the code official.

**105.4 Permit Application.** To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the City for that purpose. Such application shall not become valid until accepted by the City as complete and appropriate fees paid. Every such application shall:

1. Identify and describe the work, activity, operation, practice or function to be covered by the permit for which application is made.
2. Describe the land on which the proposed work, activity, operation, practice or function is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building, work, activity, operation, practice or function.
3. Indicate the use or occupancy for which the proposed work, activity, operation, practice or function is intended.
4. Be accompanied by plans, diagrams, computation and specifications and other data as required in Section 106 of this code or in other Parts of Title 24.
5. State the valuation of any new building or structure or any addition, remodeling, or alteration or re-roof to an existing building.
6. Give such other data and information as required by the code official.

**105.4.2 Time limitation of application.** An application for a permit for any proposed work shall be deemed to have been abandoned ~~180~~ 365 days after the date of filing, unless it can be demonstrated by the applicant that such application has been pursued in good faith or a permit has been issued; except that the code official is authorized to grant one or more extensions of time for additional periods not exceeding 180 days each per extension. The extension shall be requested in writing and justifiable cause demonstrated on a form furnished by the Building and Safety Division for that purpose. Requests for time extensions shall be accompanied by the payment of a fee set by resolution of the City Council. An application, once abandoned, shall be deemed expired and a new application will be required to be submitted.

**Exception.** If an application is associated with a code enforcement case, the dates specified in the code enforcement notices take precedence over the timelines specified in this section.

**105.6.1 Refusal to issue a permit.** Where the application or construction documents do not conform to the requirements of pertinent laws or when public safety would be at risk, the code official shall reject such application in writing, stating the reasons therefor.

**105.8 Expiration of Permit.** *On or after January 1, 2019, every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 12 months after its issuance or if the work authorized on the site by such permit is suspended or abandoned for a period of 12 months after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated. (See Health and Safety Code Section 18938.5 and 18938.6.)*

The extension shall be requested in writing and justifiable cause demonstrated on a form furnished by the Building and Safety Division for that purpose. Requests for time extensions shall be accompanied by the payment of a fee set by resolution of the City Council.

The issuance of a building permit shall not excuse the permittee or any other person from compliance with deadlines imposed in any notice and/or order to correct a code violation issued by the City. If a permit is for a project associated with a code enforcement case, the dates specified in the code enforcement notices take precedence over the timelines specified in this section.

When a permit is deemed expired and a new permit is required to complete the work, a new permit application and plans shall be filed describing the remaining work to be done. Fees shall be assessed based on the valuation of the work remaining to be completed or itemized as allowed by adopted fee schedule. If a site visit or other review is required to determine the extent of the remaining work, a fee may be charged to make such determination.

For the purposes of this section “suspended or abandoned for a period of 12 months after the time the work is commenced” shall mean that no activity or progress has been made on site for the work approved under the issued permit in the time period the permit is active and a completed and approved city inspection, per Section 109.1 of this code and/or California Building Code Section 110.3, has not been acquired.

**106.2 Information on plans and specifications.** Plans and specifications shall be drawn to scale and shall be of sufficient clarity to indicate the location, nature and extent of the work proposed, and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations.

**106.4 Vegetation management compliance.** *Prior to the building permit final approval, the property shall be in compliance with the vegetation management requirements prescribed in Section 603, including California Public Resources Code 4291 or California Government Code Section 51182, and Section 302.3. Acceptable methods of compliance inspection and documentation shall be determined by the enforcing agency and shall be permitted to include any of the following:*

- 1. Local, state or federal fire authority or designee authorized to enforce vegetation management requirements.*
- 2. Berkeley Fire Department inspection and/or vegetation management plan submittal, review, and approval.*
- 3. Third-party inspection and certification authorized to enforce vegetation management requirements.*
- 4. Property owner certification authorized by the Berkeley Fire Department.*
- 5. Compliance with hazardous vegetation and fuel mitigation and home hardening requirements in Section 604.3.1 and Section 604.3.2.*

**106.5 Fire protection plan.** Where required by the code official pursuant to Section 602, a fire protection plan shall be prepared and shall be submitted to the code official

for review and approved as a part of the plans required for a permit. The Fire Protection Plan shall be enforced and maintained by the responsible party or their designated agent. The Berkeley Fire Department may charge an appropriate fee for the review, approval and processing of the Fire Protection Plan as established by City Council resolution.

**106.8 Retention of plans.** One set of approved plans, specifications and computations shall be retained by the code official for a period of not less than 5 years from date of completion of the permitted work or as required by state or local laws or per the public records retention policy of the city, whichever is longer; and one set of approved plans and specifications shall be returned to the applicant, and said set shall be kept on the site of the building, use or work at all times during which the work authorized thereby is in progress. *Refer to Building Standards Law, Health and Safety Code Sections 19850 and 19851 for permanent retention of plans.*

**106.11 Previous approvals.** This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 480-365 days after the effective date of this code and has not been abandoned.

## **SECTION 108 – FEES**

**108.1 Payment of fees.** Except when fees are deferred, a permit application shall not be deemed valid until the fees set forth by resolution of City Council have been paid. A permit shall not be valid until the fees as set forth by resolution of City Council have been paid. An amendment to a permit shall not be released until the additional fee, if any, has been paid.

**108.2 Schedule of permit fees.** On buildings, structures, electrical, gas, mechanical, and plumbing systems, or alterations where a permit is required, a fee for each permit shall be paid as required, in accordance with the fee schedule as set forth by resolution of the City Council. Fees for permits and inspections and other related services under this code shall be assessed and paid as set forth by resolution of the City Council. Unless waived or deferred, as provided by local regulations, a plan review fee and other fees as specified in the resolution shall be paid at the time of submitting any documents for review and additional fees as specified in the resolution shall be paid at issuance of the permit.

**108.4 Work commencing before permit issuance.** Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a fee as set forth by resolution of the City Council to be twice the amount of the required fees to obtain a permit for that work, activity or operation regulated by this code. This is in addition to the permit fees for the portion of the scope of work performed without the permit.

## **SECTION 109—INSPECTION AND ENFORCEMENT**

**109.1.3.1 Re-inspection fees.** A re-inspection fee, as set forth by resolution of the City Council, may be assessed for each re-inspection when such portion of work for which an inspection is scheduled is not complete, is required to be reinspected after receiving a previously approved inspection for the same work or when corrections previously called for are not made.

Re-inspection fees shall not be required each time a job is disapproved for failure to comply with the requirements of this Code. This section applies for the following reasons:

1. When the work is not ready for inspection when the inspector arrives at the site.
2. When excessive scheduling of inspections for work not yet completed at the site.
3. When the approved plans, permit and inspection card are not readily available to the inspector at the work site.
4. For failure to provide access on the date for which the inspection is requested.
5. When work deviates from the approved plans and no approved revision to approved plans has been obtained by the permittee.
6. When other reasons, as determined by the code official, requires a re-inspection fee to be assessed.

The applicant shall pay the re-inspection fee as set forth by resolution of the City Council. In instances where re-inspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

**109.2.3 Corrective Actions.** The code official is authorized to take enforcement actions as necessary to achieve compliance with this code, including but not limited those actions specified in Sections 109.3.7 (“Violation penalties”) and 109.3.5.5 (“Summary abatement”) of this code, and as authorized by Berkeley Municipal Code, Chapter 1.24, “Abatement of Nuisances”, and in accordance with all other applicable portions of the Berkeley Municipal Code. Corrective actions may also include the use of abatement warrants and the imposition of property liens as appropriate and in accordance with law.

**109.3.2 Compliance with tags.** A building or premises shall not be used when in violation of this code as noted on a tag affixed in accordance with Section ~~409.3.4~~ 109.3.5.3.

**109.3.5 Unsafe conditions.** Structures or existing equipment that are or hereafter become structurally or otherwise unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a structural or fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against unauthorized entry shall be deemed unsafe.

All such unsafe buildings, equipment, structures or appendages are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in Chapters 1.24, 19.28, 19.40 and/or 19.44 of the BMC as applicable. As an alternative, the building official, or other employee or official

of this jurisdiction as designated by the City Council, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

**109.3.5.3 Safety Assessment Placards. ~~Placarding.~~** Upon failure of the owner, the owner's authorized agent or the person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard ~~bearing the word "UNSAFE"~~ and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

**109.3.5.3.1 Posting.** The code official or designee shall post the appropriate placard at each entry point to a building or structure upon completion of a safety assessment.

**109.3.5.3.2 Application of provisions.** The provisions of this section are applicable to all buildings and structures of all occupancies regulated by the City of Berkeley. The City Council may extend the provisions as necessary.

**109.3.5.3.3 Safety Assessment.** Safety Assessment is a visual, non-destructive examination of a building or structure for the purpose of determining the condition for continued occupancy.

**109.3.5.3.4 Placards.** This section establishes standard placards to be used to indicate the condition of a building or structure for occupancy after a natural or human-caused disaster and a rapid evaluation by authorized personnel.

Following are titles and descriptions of the official jurisdiction placards to be used to designate the condition of a building or structure for continued occupancy, partial or conditional occupancy, or unsafe to enter. Copies of placards are on file in the Building and Safety Division of the Planning and Development Department.

**INSPECTED** – Lawful Occupancy Permitted is to be posted on any building or structure wherein no apparent hazard has been found. This placard is not intended to mean there is no damage to the building or structure, but that any damage that occurred does not present a hazard to occupants.

**RESTRICTED USE** is to be posted on each building or structure that has been damaged wherein the damage has resulted in some form of restriction to the continued occupancy. The individual who posts this placard will note in general terms the type of damage encountered and will clearly and concisely note the restrictions on continued occupancy.

**UNSAFE – "Do Not Enter or Occupy"** is to be posted on each building or structure that has been damaged such that continued occupancy poses a threat to life safety. Building or structures posted with this placard shall not be entered under any circumstances except as authorized in writing by the building official, or the building official's authorized representative. Safety assessment teams shall be authorized to enter these building at any time. This placard is not to be used or considered as a demolition order. The individual who posts this placard will note in general terms the type of damage encountered.

**109.3.5.3.5 Content of placard.** The BMC Section number and the words "City of Berkeley" shall be permanently affixed to each placard.

**109.3.5.3.6 Unlawful to remove.** Once a placard has been attached to a building or structure, it is not to be removed, altered or covered until done so by an authorized representative of the code official. It shall be unlawful for any person, firm or corporation to alter, remove, cover or deface a placard unless authorized pursuant to this section.

**109.3.5.3.17 Placard removal.** The code official shall remove the unsafe condition placard whenever the defect or defects on which the unsafe condition and placarding action were based have been eliminated. Any person who defaces or removes a safety assessment placard without the approval of the code official shall be subject to the penalties provided by this code.

**109.3.5.5 Summary abatement.** Where conditions exist that are deemed hazardous to life and property, the code official is authorized to abate or correct summarily such hazardous conditions that are in violation of this code, including fire nuisances. Where the owner does not comply with an abatement order under Section 109.3.5.2 within the period specified, the City of Berkeley may perform or cause to be performed the necessary work. The costs incurred shall be recoverable under the procedures in Section 109.3.5.4.1.

**109.3.5.4.1 Abatement process.** The abatement process shall be conducted in accordance with the notice and hearing requirements of the nuisance abatement provisions of Berkeley Municipal Code Chapter 1.24, including summary abatements of structures or premises determined by the City of Berkeley to constitute an imminent hazard or emergency condition.

**109.3.7 Violation penalties.** Persons who shall violate a provision of this code or fail to comply with any of the requirements thereof or who shall erect, install, construct, alter, repair or do work for a building or structure in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law. Each day that a violation continues after due notice has been served shall be deemed a separate offense. In addition to all other legal remedies, civil or criminal (as set forth above), any violation of this code constitutes a public nuisance in accordance with B.M.C Chapter 1.26, and is subject to all provisions of B.M.C. Chapter 1.26, as well as abatement under B.M.C. Chapter 1.24, "Abatement of Nuisances," with the exception of section 112 (Means of Appeal) which supersedes these provisions. All such violations are also subject to the issuance of an administrative citation in accordance with B.M.C Chapter 1.28 at the discretion of the enforcing officer or the City Attorney.

**109.3.7.1 Unlawful acts.** *It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish, ~~or~~ occupy, or utilize any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code or create, maintain or allow to continue any fire hazard.*

**109.4 Restricted Entry of Wildland-Urban Interface Areas.** The code official shall determine and publicly announce when Wildland-Urban Interface areas shall be closed to entry and when such areas shall again be opened to entry. Entry on and occupation of Wildland-Urban Interface areas, except public roadways, inhabited areas or

established trails and camp sites which have not been closed during such time when the Wildland-Urban Interface areas are closed to entry, is prohibited.

**Exceptions:**

1. Residents and owners of private property within Wildland-Urban Interface areas and their invitees and guests going to or being upon their lands;
2. Entry, in the course of duty, by peace officers, and other duly authorized public officers, members of a fire department and members of the United States Forest Service.

**109.5 Trespassing on Posted Property**

**109.5.1 General.** When the code official determines that a specific area within a Wildland-Urban Interface Areas, as listed in Section 302.3, presents an exceptional and continuing fire danger because of the density of natural growth, difficulty of terrain, proximity to structures or accessibility to the public, such areas shall be closed until changed conditions warrant termination of closure. Such areas shall be posted as hereinafter provided.

**109.5.2 Signs.** Approved signs prohibiting entry by unauthorized persons and referring to this section shall be placed on every closed area.

**109.5.3 Trespassing.** Entering and remaining within areas closed and posted is prohibited.

**Exception:** Owners and occupiers of private or public property within closed and posted areas, their guests or invitees, and local, state and federal public officers and their authorized agents acting in the course of duty.

**SECTION 110—CERTIFICATE OF OCCUPANCY**

**110.1 General.** A building, structure or premises shall not be used or occupied, and a change in the existing use or occupancy classification of a building, structure, premise or portion thereof shall not be made until the code official has issued a certificate of occupancy therefor as provided herein. The certificate of occupancy shall not be issued until the code official has determined that the project is in compliance with this code. *The code official shall, upon completion of construction, provide the owner or applicant with a copy of the final inspection report that demonstrates the building was constructed in compliance with all applicable state and local building standards, including those for materials and construction methods for wildfire exposure as described in this code. Issuance of a certificate of occupancy by the local building official for the proposed building shall be considered to indicate compliance with this code.*

**110.2 Certificate of occupancy.** Issuance of a certificate of occupancy is the responsibility of the local building official. The issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other pertinent laws and ordinances of the jurisdiction. Certificates presuming to give authority

to violate or cancel the provisions of this code or other laws or ordinances of the jurisdiction shall not be valid.

**110.3 Temporary occupancy.** The code official, in agreement with the local building official, is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The code official shall set a time period during which the temporary certificate of occupancy is valid.

**110.4 Revocation.** The code official, in agreement with the local building official, is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, on the basis of incorrect information supplied, or where it is determined that the building or structure, premise or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

## **SECTION 111 – SERVICE UTILITIES**

**111.1 Authority for connection of service utilities.** A person shall not make connections from a utility, a source of energy, fuel, power, water system or sewer system to any building, structure or system that is regulated by this code for which a permit is required until authorization to connect by the code official has been obtained.

**111.1.2 Authority to connect utilities.** Clearance for connection of one utility, either gas or electrical, will be withheld until final building, electrical, plumbing, and/or mechanical inspections are made and approval has been given for any new building or change in occupancy classification to an existing building for which connection to such utilities is sought, unless approval has been first obtained from the code official, as provided by a Temporary Certificate of Occupancy or Final Certificate of Occupancy.

**111.3 Authority to disconnect service utilities in emergencies.** The code official shall have the authority to authorize to disconnect electrical power or other energy service supplied to a building, structure, ~~or~~ system or building service equipment therein regulated by this code and the referenced codes and standards in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without the approval required by Section 111.1 or 111.2. The code official shall notify the serving utility and, where possible, the owner or the owner's authorized agent and the occupant of the building, structure, ~~or~~ service system or equipment of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner, the owner's authorized agent or the occupant of the building, structure, ~~or~~ service system or equipment shall be notified in writing as soon as practical thereafter.

**111.4 Unsafe service utilities.** Unsafe service utilities are hereby declared to be public nuisances and shall be abated, repaired, rehabilitated, demolished or removed in accordance with the procedures set forth in this code and/or per Chapter 19.40 of the Berkeley Municipal Code (BMC) for residential buildings and Berkeley Building Code for all other buildings, or any alternate procedure that may be adopted by the City of Berkeley. In addition, the City Attorney may pursue other appropriate action to prevent, restrain, correct or abate the violation as provided for in the BMC. Remedies under this section

are cumulative. When service utilities are maintained in violation of this Code and in violation of a notice issued pursuant to the provisions of this section, the code official shall institute appropriate action to prevent, restrain, correct or abate the violation.

**111.5 Authority to condemn electrical, plumbing and/or mechanical systems and equipment.** Whenever the code official determines that an electrical, plumbing, or mechanical system or equipment regulated by this code is hazardous to life, health or property, the building official may order in writing that such systems or equipment either be removed or restored to a safe working condition. The written notice shall fix a reasonable time limit for compliance with such order. Persons shall not use or maintain defective systems or equipment after receiving such notice except as may be provided therein.

When equipment or an installation is to be disconnected, a written notice of such disconnection and the reasons therefore shall be given within 24-hours of the order to disconnect to the serving utility, the owner and occupants of the building, structure or premises.

When equipment or an installation is maintained in violation of this Code and in violation of a notice issued pursuant to the provisions of this section, the building official shall institute appropriate action to prevent, restrain, correct or abate the violation.

Unsafe electrical, plumbing, and/or mechanical systems or equipment are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in Chapter 19.40 of the BMC for residential buildings and Berkeley Building Code for all other buildings, or any alternate procedure adopted by the City of Berkeley. In addition, the City Attorney may pursue other appropriate action to prevent, restrain, correct or abate the violation as provided for in the BMC. Remedies under this section are cumulative.

**111.6 Connection after order to disconnect.** Persons shall not make connections to a service utility, a source of energy, fuel, or power, or a water system or sewer system or equipment that has been disconnected or ordered to be disconnected by the building official, or the use of which has been ordered to be discontinued by the code official, until the building official authorizes the reconnection and use of the disconnected service systems or equipment.

## **SECTION 112 – MEANS OF APPEALS**

**112.1 Appeals Procedure.** The City Council shall hear and decide on appeals of orders, decisions, or determinations made by the Fire Code Official relative to the application and interpretation of this code. A property owner may appeal an order, decision, or determination of the Fire Code Official within 10 calendar days of the date of mailing of the appealable action. The notice of appeal shall contain a statement of the reasons for the appeal and be filed with the City Clerk of the City of Berkeley. The City Clerk shall forward one copy thereof to the Fire Code Official, who shall transmit to the City Council all their records pertaining to the decision being appealed.

**Section 112.1.1 Payment of Fees and Fines.** Prior to the deadline to appeal, the property owner must pay the appeal fee, per the adopted fee schedule, in addition to an advance deposit of the fine or file an application for an advanced deposit hardship waiver. If the hardship waiver is not granted, the fine must be deposited to the City within 14 days of mailed notice of that decision. No hearing shall be scheduled prior to receipt of payment or approval of the hardship waiver.

**112.1.2 Stay of Proceedings.** The filing of the notice of appeal shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until determination of the appeal as hereinafter provided, unless the fire code official determines that such a stay could result in an imminent threat to public safety.

**112.2 Limitations on authority.** An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equivalent or better form of construction is proposed. The City Council shall not have authority to waive requirements of this code.

**112.3 Decisions.** The City Council shall review the action of the fire code official and shall do any one of the following:

Refer the matter back to the fire code official.

If the facts stated in, or ascertainable from the, Notice of Appeal, the written statement of the fire code official setting forth the reason for their decision, and the other papers, if any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the fire code official. Such decision shall be final.

If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing by mailing a copy of such notice by certified mail to the address of the appellant as stated in the Notice of Appeal, at least ten (10) days before the time fixed for the hearing. The City Council may continue the hearing from time to time.

Following such hearing, the City Council shall reverse, affirm wholly or partly modify any decision of the fire code official, or make any other decisions or determinations or impose such conditions as the facts warrant. Such decision or determination shall be final.

If none of the above actions have been taken by the City Council within thirty (30) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal shall be deemed dismissed.

If the appeal is set for hearing but the disposition of the appeal has not been determined within ninety (90) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal deemed dismissed.

**112.4 Administration.** The fire code official shall take action without delay in accordance with the decision of the City Council.

## **Article 2. Definitions**

### **19.49.030 Adoption of Chapter 2 Definitions**

Chapter 2 of the 2025 California Wildland-Urban Interface Code is partially adopted with adopted sections below. (Sections adopted by the State Fire Marshal remain unless modified below.)

**ACCESSORY STRUCTURE.** A structure that is accessory to and incidental to that of the primary structure and that is located on the same lot.

**APPLICABLE BUILDING.** *A building or structure that has residential, commercial, educational, institutional or similar occupancy type use.*

**BERKELEY BUILDING STANDARDS CODE.** The Berkeley Building Standards Code includes the most recently adopted Berkeley Building Code, Berkeley Residential Code, Berkeley Existing Building Code, Berkeley Historical Building Code, Berkeley Electrical Code, Berkeley Mechanical Code, Berkeley Plumbing Code, Berkeley Green Code, and Berkeley Energy Code.

**BOLE OF A TREE.** A bole of a tree is its main trunk, specifically the part extending from the roots up to the first branches and canopy.

**FIRE HAZARD.** Anything or act which increases or could cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire or anything or act which could obstruct, delay, hinder or interfere with the operations of the fire department or the egress of occupants in the event of fire. Fire hazards as defined herein are hereby declared to be public nuisances subject to abatement by the City of Berkeley.

**FIRE HAZARD SEVERITY ZONES.** *Geographical areas designated pursuant to California Public Resources Codes, Sections 4201 through 4204 and classified as Very High, High, or Moderate in State Responsibility Area or as Local Agency Very High Fire Hazard Severity Zones designated pursuant to California Government Code, Sections 51175 through 51189, and locally amended and adopted under ordinance 7958 N.S.*

The California Code of Regulations, Title 14, Section 1280 entitles the maps of these geographical areas as "Maps of the Fire Hazard Severity Zones in the State Responsibility Area of California." *The map, approved by the Office of the State Fire Marshal, is hereby incorporated by reference and entitled "State Responsibility Area Fire Hazard Severity Zones," dated April 1, 2024. The map is available at <https://osfm.fire.ca.gov/fire-hazard-severity-zones>.*

In the City of Berkeley, the wildland-urban interface areas that include high and very high fire hazard severity zones are described in Section 302.3 of this code.

**FIRE NUISANCE.** Anything or act, which is annoying, unpleasant, offensive or obnoxious because of fire.

**FIRE PROTECTION PLAN.** A document prepared for a specific premises, project or development, either existing or proposed for the wildland-urban interface area. It describes ways to minimize and mitigate *potential for loss from wildfire exposure*.

**FORBS.** Forbs are herbaceous (non-woody) flowering plants that are not grasses, sedges, or rushes.

**FUEL BREAK.** *(applicable to CCR, Title 14 provisions only). A strategically located area where the volume and arrangement of vegetation has been managed to limit fire intensity, fire severity, rate of spread, crown fire potential and/or ember production. [CCR Title 14§1270.01(n)].*

**IGNITION-RESISTANT BUILDING MATERIAL.** A type of building material that resists ignition or sustained flaming combustion sufficiently so as to reduce losses from wildfire exposure of burning embers and small flames, and complies with the requirements of this code.

**JURISDICTION.** The City of Berkeley.

**OUTBUILDING(S).** *(applicable to CCR, Title 14 provisions only). Any Bbuildings or structures that are less than 120 square feet (11.15 m2) in size and not used for human habitation.*

**WILDLAND-URBAN INTERFACE AREA (WUI).** *A geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code Sections 4201 through 4204 and Government Code Sections 51175 through 51189, and other areas designated by the City to be at a significant risk from wildfires. For the City of Berkeley's WUI areas see section 302.3.*

### **Article 3. Wildland-Urban Interface Areas**

#### **19.49.040 Chapter 3 Wildland-Urban Interface Areas**

Chapter 3 of the 2025 California Wildland-Urban Interface Code is partially adopted with adopted sections below. (Sections adopted by the State Fire Marshal remain unless modified below.)

**302.3 WUI Areas in Berkeley.** The High Fire Hazard Severity Zone, Very High Fire Hazard Severity Zone, Panoramic Mitigation Area, and Grizzly Peak Mitigation Area are designated as Wildland-Urban Interface Area (WUI) and are described as follows:

**302.3.1 FLATLANDS AREA.** The Flatlands Area encompasses the entire City of Berkeley except for areas in the High and Very High Fire Hazard Severity Zones, which includes the Panoramic Mitigation Area and Grizzly Peak Mitigation Area.

**302.3.2 HIGH FIRE HAZARD SEVERITY ZONE.** Encompasses those areas identified as High Fire Hazard Severity Zones, locally amended and designated by ordinance pursuant to California Government Code Sections 51176 through 51189. These areas are available on the City of Berkeley publicly accessible GIS map.

This area includes areas of the City east / northeast of the line formed by these roads. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:

- a. The Arlington Avenue from the Kensington Border to Marin Avenue
- b. Fountain Walk from Marin Avenue to Sutter Street
- c. Sutter Street from the southern portal of the Northbrae Tunnel to Eunice Street
- d. Eunice Street from Sutter Street to Spruce Street
- e. Spruce Street from Eunice Street to Hearst Avenue
- f. Hearst Avenue from Spruce Street to Gayley Road
- g. Gayley Road from Hearst Avenue to Piedmont Avenue
- h. Piedmont Avenue from Gayley Road to Bancroft Way
- i. Piedmont Crescent from Piedmont Avenue to Warring Street
- j. Warring Street from Dwight Way to Derby Street
- k. Derby Street from Warring Street to Belrose Avenue
- l. Belrose Avenue from Derby Street to Garber Street
- m. Claremont Boulevard from Garber Street to Claremont Avenue
- n. Claremont Avenue from Claremont Boulevard to the Oakland Border

**302.3.5 VERY HIGH FIRE HAZARD SEVERITY ZONE.** The Very High Fire Hazard Severity Zone encompasses those areas identified by CalFIRE as Very High Fire Hazard Severity Zones pursuant to California Government Code 51175-51189, locally amended and designated by ordinance. These areas are available on the City of Berkeley publicly accessible GIS map.

**PANORAMIC MITIGATION AREA.** The Panoramic Mitigation Area encompasses those areas of the city bounded by the line formed by these roads and by the City Limit to the east. The entirety of the Panoramic Mitigation Area is designated, by ordinance, as a Very High Fire Hazard Severity Zone. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:

- a. Centennial Drive from the Oakland border to Stadium Rim Way
- b. Stadium Rim Way from Centennial Drive to Canyon Road
- c. Canyon Road from Stadium Rim Way to Bancroft Way
- d. Bancroft Way from Canyon Road to Bancroft Steps
- e. Bancroft Steps from Bancroft Way to Bancroft Way
- f. Bancroft Way from Bancroft Steps to Piedmont Avenue
- g. Piedmont Avenue from Bancroft Way to Dwight Way
- h. Dwight Way East from Piedmont Avenue to the eastern terminus of Dwight Way.
- i. A straight line extending East from the terminus of Dwight Way to the Oakland border.

**GRIZZLY PEAK MITIGATION AREA.** The Grizzly Peak Mitigation Area encompasses those areas of the city east of Grizzly Peak Boulevard to the city boundary. Homes addressed on, or with a structural frontage on either side of Grizzly Peak Boulevard are included in the area. The Grizzly Peak Mitigation Area is designated, by ordinance, as a Very-High Fire Hazard Severity Zone.

**302.4 Restrictions in Wildland-Urban Interface Areas.** Code requirements in this code apply to the High Fire Hazard Severity Zone, Very High Fire Hazard Severity Zone, Panoramic Mitigation Area, and Grizzly Peak Mitigation Area.

## **Article 4. Wildland-Urban Interface Area Requirements**

### **19.49.050 Chapter 4 Wildland-Urban Interface Area Requirements**

Chapter 4 of the 2025 California Wildland-Urban Interface Code is partially adopted with adopted sections below. (Sections adopted by the State Fire Marshal remain unless modified below.)

**402.3 Existing conditions.** *Existing buildings shall be provided with address markers in accordance with Sections 403.2.4 and 403.2.5. Existing roads and fire protection*

*equipment shall be provided with markings in accordance with Sections 403.4-403.2.2 and 403.2.3-404.8, respectively.*

## **SECTION 403—ACCESS**

**USER NOTE:** The standards in Section 403 applicable to roads shall not apply to roads used solely for agriculture; mining; or the management of timberland or harvesting of forest products. [CCR, Title 14 §1270.03(d)]

**403.1 General.** Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.03(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent 403.1.1 to 403.1.9. [CCR, Title 14 §1273.00]

Where conflicts occur between Section 403 – Access and the Berkeley Fire Code Appendix D – Fire Apparatus Access Roads, the provisions of the most restrictive code shall govern.

### **403.2.4 Addresses for Buildings.**

*(a) All Buildings shall be issued an address by the City of Berkeley which conforms to the City’s overall address system. Utility and miscellaneous Group U Buildings are not required to have a separate address; however, each Residential Unit within a Building shall be separately identified.*

*(b) The size of letters, numbers and symbols for addresses shall conform to the standards in the California Building Code Section 502.1.*

*(c) Addresses for residential Buildings shall be reflectorized.*

**404.5 Adequate water supply.** *Fire-flow requirements shall be determined in accordance with Appendix B or BB of the Berkeley Fire Code, as applicable.*

## **Article 5. Special Building Construction Regulations**

### **19.49.060 Chapter 5 Special Building Construction Regulations**

Chapter 5 of the 2025 California Wildland-Urban Interface Code is partially adopted with adopted sections below. (Sections adopted by the State Fire Marshal remain unless modified below.)

**501.1 Scope.** New Buildings and structures, additions, alterations, repairs and re-roofs constructed *in a wildland-urban interface area* shall be constructed in accordance with the *California Building Code*, California Fire Code and this code.

**Exceptions:**

1. *Group U accessory buildings or structures not exceeding 120 square feet (11 m<sup>2</sup>) in floor area where located not less than 50 feet (15240 mm) from applicable buildings on the same lot.*
2. *Group U agricultural buildings or structures not less than 50 feet (15 240 mm) from applicable buildings.*

**501.1.1 Purpose.** The purpose of this chapter is to establish minimum standards for the protection of life and property by increasing the ability of a building located in any Fire Hazard Severity Zone within a State Responsibility Area (SRA) or Local Responsibility Areas (LRA) or any building or structure in the wildland-urban interface (WUI) areas as specified in Section 302.3 to resist the intrusion of flames or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses.

**501.1.2 Application.** Construction of new buildings and structures, additions, alterations, repairs, and re-roofs located in any Fire Hazard Severity Zone or new buildings and structures, additions, alterations, repairs and re-roofs located in any wildland-urban interface (WUI) area designated by the enforcing agency constructed after the application date shall comply with the provisions of this chapter. This shall include all new buildings and structures, additions, alterations, repairs and re-roofs with residential, commercial, educational, institutional or similar occupancy type uses, which shall be referred to in this chapter as “applicable building(s)” (see definition in Chapter 2), as well as new buildings and structures, additions, alterations, repairs and re-roofs accessory to those applicable buildings.

**501.2.1 Construction methods and requirements within established limits.**

Within the limits established by law, construction methods intended to mitigate wildfire exposure shall comply with the wildfire protection building construction requirements contained in this code, the Berkeley Fire Code, and the Berkeley Building Standards whichever is most restrictive.

**503.1 General.** Buildings and structures hereafter constructed, added to, modified, repaired, re-roofed or relocated into or within wildland-urban interface areas shall meet the construction requirements in accordance with *Chapter 5*. Materials required to be ignition-resistant *building* materials shall comply with the requirements of Section 503.2.

**Exceptions:**

1. *New accessory buildings and miscellaneous structures complying with Section 504.11.*
2. *Group C occupancy special buildings conforming to the limitations specified in Section 450.4.1 of the California Building Code.*

**504.2 Roof assembly.** Roofs shall have a roof assembly that complies with a Class A *fire classification* when tested in accordance with ASTM E108 or UL 790. For additional compliance see California Building Code Chapter 15, Section 1505.2 for Class A roof assemblies. The roof assembly shall be installed in accordance with its listing and the manufacturer's installation instructions.

Wooden shakes and shingles are prohibited roof coverings regardless of the assembly rating of the roof system

**Exceptions:** *The following assemblies are exempt from testing and shall be considered as equivalent to the Class A fire classification:*

1. Roof assemblies with coverings of brick, masonry or an exposed concrete roof deck.
2. Roof assemblies with ferrous or copper shingles or sheets, metal sheets and shingles, clay or concrete roof tile or slate installed on noncombustible decks or ferrous, copper or metal sheets installed without a roof deck on noncombustible framing.
3. Roof assemblies *with* minimum 16 oz/sq ft (0.0416 kg/m<sup>2</sup>) copper sheets installed over combustible roof decks.
4. *Roof assemblies of slate roof covering installed over ASTM D226, Type II underlayment over combustible decks.*

## **505 – REPLACEMENT OF EXTERIOR WALL COVERING**

**505.1 Replacement of Exterior Wall Covering.** Materials for replacement of existing exterior wall covering shall meet or exceed the standards set forth in Section 504.5 of this code.

**Exception:** Where less than 50% of any wall surface is being replaced or repaired, and the matching of the new plane to the existing plane on that wall is not possible.

## **506 – UNDERGROUND UTILITY CONNECTIONS**

**506.1 Underground utility connections.** For new construction, provisions shall be made for the undergrounding of all utilities serving the property, including but not limited to electrical, telephone and cable television, by the installation of appropriately sized underground conduits extending from the parcel.

## **SECTION 507—REPLACEMENT OR REPAIR OF ROOF COVERINGS**

**507.1 General.** The roof covering on buildings or structures in existence prior to the adoption of this code that are entirely replaced shall be replaced with a roof covering as required for new construction in accordance with *Sections 504.2 and 504.2.1. All portions of a roof covering applied during an addition, alteration or repair to an existing structure*

*shall meet at least a Class A fire classification* in accordance with Sections 504.2 and 504.2.1.

The entire roof covering of every existing building or structure where more than 50 percent of the total roof area is replaced within any 5-year period shall be replaced with a fire-retardant roof covering in accordance with Sections 504.2 and 504.2.1.

## **SECTION 508—ADDITIONAL REQUIREMENTS IN THE PANORAMIC MITIGATION AREA.**

**508.1 General.** In addition to meeting the other requirements of this code, buildings or structures hereinafter erected, constructed, moved, altered, added, or repaired within the Panoramic Mitigation Area shall comply with the following requirements for buildings and structures.

**508.1.2 Fire warning system.** All residential units shall be equipped with a Fire Warning System as specified by the residential smoke alarm requirements in the most recently adopted California Building Code and/or California Residential Code and with an audible exterior alarm. The exterior alarm must meet the requirements of NFPA 72 or equivalent and generate 45 decibels ten feet from the alarm, or more.

**508.1.3 Automatic fire sprinkler systems.** Automatic fire sprinkler system requirements shall be as set forth in Berkeley Fire Code Section 903.2.24.

**508.1.4 Utilities.** Utilities, pipes, furnaces, water heaters or other mechanical devices located in an exposed underfloor area of a building or structure shall be enclosed with material as required for exterior one hour fire resistive construction. Adequate covered access openings for servicing and ventilation of such facilities shall be provided as required by the applicable code.

**508.1.5 Water Service.** The water service to the site shall be installed with a 3/4" hose bib connection prior to beginning any construction involving any wood forming or framing. The person responsible for the construction shall have at the site a 75 ft 3/4" hose available at all times.

## **Article 6. Fire Protection Requirements**

### **19.49.070 Chapter 6 Fire Protection Requirements**

Chapter 6 of the 2025 California Wildland-Urban Interface Code is partially adopted with adopted sections below. (Sections adopted by the State Fire Marshal remain unless modified below.)

## **SECTION 604—MAINTENANCE OF DEFENSIBLE SPACE**

**604.3 Requirements.** *Hazardous vegetation and fuels around all buildings and structures shall be maintained in accordance with the following laws and regulations:*

- 1. Public Resources Code, Section 4291.*
- 2. California Code of Regulations, Title 14, Division 1.5, Chapter 7, Subchapter 3, Article 3, Section 1299.03.*
- 3. California Government Code, Section 51182.*
- 4. California Code of Regulations, Title 19, Division 1, Chapter 7, Subchapter 1, Section 3.07.*
- 5. H106azardous vegetation and fuel mitigation and home hardening requirements in Section 604.3.1 and Section 604.3.2.*

**604.3 Defensible Space Requirements.**

**604.3 Requirements.** The code official may require a property owner to perform hazardous vegetation and fuel management on their land to maintain defensible space up to 100 feet from structures located on adjacent properties.

Property owners are not required or authorized by this code to enter the properties of another person to implement the requirements of this Section.

**604.3.1 Mitigations Required.** Within the locally designated Very High Fire Hazard Severity Zone a person who owns, leases, controls, operates, or maintains lands shall at all times:

1. Remove all branches within 10 feet of any chimney or stovepipe outlet.
2. Maintain the roof and roof gutters of any structure, and the surface of any attached deck, porch, landing, or stairs free of leaves, needles, or other deposited vegetative materials.
3. Maintain 6 feet of vertical clearance between branches and all other parts of trees or other vegetation overhanging the roof or other portion of any Structure or attached deck.
4. Zone 0: 0-5 feet from any structure: The requirements of 604.3.1.5 (Zone 1) below apply to this zone.
5. Zone 1: 5 to 30 feet from any structure:
  - a. Remove contiguous vegetation without adequate fuel separation to prevent spread to the structure.
  - b. Maintain any tree, shrub, or other plant adjacent to or overhanging any Structure or attached deck free of dead or dying wood.
  - c. Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 6' feet above the ground or surface fuels.
  - d. Where shrubs or small trees are located below or within a tree's drip line, the lowest tree branch shall be a minimum of three times the height of the understory shrubs or 6 feet, whichever is greater.
  - e. For structures on the same property, such as a shed, hot tub, and playset, ensure these structures are spaced at least 10 feet apart. Have at most three (3) of these structures within 30 feet of a building or structure.
    - i. Existing moveable structures shall comply with the above.
  - f. Relocate exposed firewood piles or lumber further than zone 1, unless they are completely covered in a fire-resistant covering approved by the State Fire Marshal's Building Material Listing Service.
6. Zone 2: 30 to 100 feet from any structure:
  - a. All exposed wood piles or lumber must have a perimeter of a minimum of ten feet (10 ft.) of non-combustible material, such as bare mineral soil, in all directions.
7. For both Zones 1 and 2:
  - a. Remove vegetative and combustible material capable of transmitting fire to a structure as determined by the Fire Code Official.
  - b. Dead and dying woody surface fuels and aerial fuels shall be removed. Loose surface litter, normally consisting of fallen leaves or needles, twigs, bark, cones, and small branches, shall be permitted to a maximum depth of three inches (3 in.).

- c. Cut annual grasses and annual forbs to a maximum height of four inches (4 in.) prior to, or upon reaching the senescent or ripening phase when the preponderance of vegetative material is cured or dead.
- d. Vertical Spacing: Limb trees by removing hanging bark, debris and branches that are within six feet (6 ft.) of the ground.
- e. Create horizontal and vertical spacing among shrubs and trees using the “Fuel Separation” method, the “Continuous Tree Canopy” method or a combination of both to achieve defensible space clearance requirements. Further guidance regarding these methods is contained in the State Board of Forestry and Fire Protection's, “General Guidelines for Creating Defensible Space, February 8, 2006,” incorporated herein by reference.
- f. Maintain horizontal spacing between shrubs.
  - i. Flat or mild slope (less than 20%): Two times the height of the shrub.
  - ii. Mild to moderate slope (20-40%): Four times the height of the shrub
  - iii. Moderate to steep slope (greater than 40%): Six times the height of the shrub
  - iv. Shrubs maintained as trees, such as limited stems and limbed up 6 feet or one third the height, whichever is greater, shall comply with requirements for trees, and not this section.
  - v. Consistent with fuel management objectives, steps should be taken to minimize erosion, soil disturbance, and the spread of flammable, non-native grasses and weeds.
- g. New trees shall be planted and maintained so that the tree’s drip line at maturity is a minimum of 10 feet from any structure or the canopy of other trees.

**604.3.2 Specific requirements for Panoramic Mitigation Area and Grizzly Peak Mitigation Area.** Effective January 1, 2026 the Grizzly Peak Mitigation Area and Panoramic Mitigation Area shall be subject to 604.3.2 in addition to 604.3.1

A person who owns, leases, controls, operates, or maintains lands shall at all times:

1. Zone 0: 0 to 5 feet from any structure:

- a. Maintain all areas within five (5) horizontal feet of any structure, outbuildings, attached deck or stairs, and the area under attached decks and stairs free of vegetative and non-vegetative combustible material.
  - i. This includes but is not limited to shrubs, vegetative ground cover, climbing vines, combustible boards, timbers, firewood, debris, synthetic lawn, wood mulch products, playsets, plastic trash and recycle cans, trellises, pergolas, shade coverings, planters, attached window boxes, privacy walls, boats, RVs, and other material that could be ignited by embers, radiant heat, or direct flame.
  - ii. Hardscape materials, such as gravel, pavers, concrete, and other noncombustible materials, including bare mineral soil, are permitted.
  - iii. Exception: Plants in pots are allowable if they are in areas that are not directly beneath, above, or adjacent to a window or eave; are kept in an unaffixed, non-combustible pot or container that is no larger than 5-gallon capacity; and set apart by 1.5 times the height of the plant or 12 inches, whichever is greater, from the structure and each other. These plants shall be no greater than 18 inches in height. Dead or dying material on, around and under the plants shall be removed.
  - iv. Exception: Hot tubs may be installed within five (5) horizontal feet of a structure, provided they comply with all Zone 0 clearance requirements applicable to structures.
- b. Trees: Existing trees and shrubs are permitted in Zone Zero if:
  - i. Maintained free of dead material.
  - ii. The crown (canopy) is maintained to create:
    1. Six feet (6') above the adjacent building or structure's roof
    2. Ten feet (10') away from chimneys and stovepipe outlets; and
    3. Five feet (5') of horizontal clearance from the sides of any Building, Structure, attached deck, porch, landing or stairs, and hot tubs within five (5) feet of a structure.
      - a. Exception: trees integrated into a deck must maintain 5 feet horizontal separation from the adjacent structure and branches must be 6 feet above the deck.
    4. 6' of vertical clearance above attached decks, attached, landing or stairs, and hot tubs within 5' of a structure.

- c. The roof and rain gutters of a Building or Structure shall be kept clear of leaves, needles, and vegetative material.
- d. Existing fences that are directly attached to a Building or Structure shall have a five foot (5 ft) non-combustible span at the point of attachment.
  - i. Existing fences that are not parallel to the adjacent structure wall, and are within 5 feet of that wall, shall have a non-combustible span within the first 5 feet of the structure perpendicular to the exterior structure wall.
  - ii. Existing parallel fences that do not touch the structure are allowed.
- e. After the effective date of this regulation, no new or replacement sections of combustible fence are permitted within 5 feet of a building or structure including an attached deck.
- f. Outbuildings are not permitted in Zone 0, unless constructed according to the standards in Chapter 7A (commencing with Section 701A.1) of Part 2 of Title 24 of the California Code of Regulations. Outbuildings that meet these standards shall be considered part of the Building or Structure for the purpose of measuring Zone 0.

## **SECTION 605—SPARK ARRESTORS**

**605.1 General.** Chimneys serving fireplaces, barbecues, incinerators or ~~decorative~~ heating appliances in which solid or liquid fuel is used shall be provided with a spark arrestor. Spark arrestors shall be constructed of woven or welded wire screening of 12 USA standard gage wire (0.1046 inch) (2.66 mm) having openings not exceeding 1/2 inch (12.7 mm). The arrestor shall be securely attached to the chimney or stovepipe and shall be adequately supported. The use of bands, mollies, masonry anchors or mortar ties are recommended depending upon the individual need. See California Building Code Section 2113A.9.2 (“Spark arrestors”) for specifications.

## **SECTION 606—LIQUEFIED PETROLEUM GAS INSTALLATIONS**

**606.1 General.** The storage of liquefied petroleum gas (LP-gas) and the installation and maintenance of pertinent equipment shall be in accordance with the ~~California~~-Berkeley Fire Code.

**606.2 Location of containers or tanks.** LP-gas containers or tanks shall be located within the defensible space in accordance with the ~~California~~-Berkeley Fire Code.

### **Article 7. Referenced Standards**

#### **19.49.080 Chapter 7 Referenced Standards**

Chapter 7 of the 2025 California Wildland-Urban Interface Code is partially adopted with adopted sections below. (Sections adopted by the State Fire Marshal remain unless modified below.)

**BOF** *State Board of Forestry and Fire Protection*

RPC 2 (c) - General Guidelines for Creating Defensible Space, February 8, 2006

## CEC

CEnC – 2025: California Energy Code

1.1.8.2,

## IAPMO

CPC – 2025: California Plumbing Code

201.3

CMC – 2025: California Mechanical Code

201.3

## NEC

CEC – 2025: California Electrical Code

201.3

### Article 8. General Requirements

#### 19.49.090 APPENDIX A – GENERAL REQUIREMENTS

**Appendix A** of the 2025 Wildland-Urban Interface Code is adopted and reproduced in its entirety subject to the modifications thereto which are set forth below.

#### SECTION A101—GENERAL

**A101.1 Scope.** The provisions of this appendix establish general requirements applicable to new and existing properties located within wildland-urban interface areas.

**A101.2 Objective.** The objective of this appendix is to provide necessary fire protection measures to reduce the threat of wildfire in a wildland-urban interface area and improve the capability of controlling such fires.

#### SECTION A102—VEGETATION CONTROL

**A102.1 General.** Vegetation control shall comply with Sections A102.2 through A102.4.

**A102.2 Clearance of brush or vegetative growth from roadways.** The code official is authorized to require areas within 10 feet (3048 mm) on each side of portions of fire apparatus access roads and driveways to be cleared of *nonfire-smart* vegetation growth.

**Exception:** Single specimens of trees, ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy, succulents or similar plants used as ground cover, provided they do not form a means of readily transmitting fire.

**A102.4 Correction of condition.** The code official is authorized to give notice to the owner of the property on which conditions regulated by Section A102 exist to correct such conditions. If the owner fails to correct such conditions, the legislative body of the

jurisdiction is authorized to cause the same to be done and make the expense of such correction a lien on the property where such condition exists.

## SECTION A103—ACCESS RESTRICTIONS

**A103.1 Restricted entry to public lands.** The code official is authorized to determine and publicly announce when wildland-urban interface areas shall be closed to entry and when such areas shall again be opened to entry. Entry on and occupation of wildland-urban interface areas, except public roadways, inhabited areas or established trails and campsites that have not been closed during such time when the wildland-urban interface area is closed to entry, is prohibited.

### **Exceptions:**

1. Residents and owners of private property within wildland-urban interface areas and their invitees and guests going to or being on their lands.
2. Entry, in the course of duty, by peace or police officers, and other duly authorized public officers, members of a fire department and members of the Wildland Firefighting Service.

**A103.2 Trespassing on posted private property.** Where the code official determines that a specific area within a wildland-urban interface area presents an exceptional and continuing fire danger because of the density of natural growth, difficulty of terrain, proximity to structures or accessibility to the public, such areas shall be restricted or closed until changed conditions warrant termination of such restriction or closure. Such areas shall be posted in accordance with Section A103.2.1.

**A103.2.1 Signs.** Approved signs prohibiting entry by unauthorized persons and referring to this code shall be placed on every closed area.

**A103.2.2 Trespassing.** Entering and remaining within areas closed and posted is prohibited.

**Exception:** Owners and occupiers of private or public property within closed and posted areas; their guests or invitees; authorized persons engaged in the operation and maintenance of necessary utilities such as electrical power, gas, telephone, water and sewer; and local, state and federal public officers and their authorized agents acting in the course of duty.

**A103.3 Use of fire roads, fire breaks, fire trails and defensible space.** Motorcycles, motor scooters and motor vehicles shall not be driven or parked on, and trespassing is prohibited on, fire roads, fire breaks, fire trails or defensible space beyond the point where travel is restricted by a cable, gate or sign, without the permission of the property owners. Vehicles shall not be parked in a manner that obstructs the entrance to a fire road or defensible space.

**Exception:** Public officers acting within their scope of duty.

**A103.3.1 Obstructions.** Radio and television aerials, guy wires thereto, and other obstructions shall not be installed or maintained on fire roads, fire breaks, fire trails or

defensible spaces, unless located 16 feet (4877 mm) or more above such fire road or defensible space.

**A103.3.2 Public access roads, fire roads, firebreaks and fire trails.** No person(s) shall use any public access road, fire road, firebreak or fire trail for the storage of any construction material, stationary construction equipment, construction office, portable refuse container, earth from any grading or excavating, or any other construction related activity.

**A103.4 Use of motorcycles, motor scooters, ultralight aircraft and motor vehicles.** Motorcycles, motor scooters, ultralight aircraft and motor vehicles shall not be operated within wildland-urban interface areas, without a permit by the code official, except on clearly established public or private roads designated for use by motorcycles, motor scooters, ultralight aircraft and motor vehicles. Permission from the property owner shall be presented when requesting a permit.

**A103.5 Tampering with locks, barricades, signs and address markers.** Locks, barricades, seals, cables, signs and address markers installed within wildland-urban interface areas, by or under the control of the code official, shall not be tampered with, mutilated, destroyed or removed.

**A103.5.1 Gates, doors, barriers and locks.** Gates, doors, barriers and locks installed by or under the control of the code official shall not be unlocked.

## SECTION A104—IGNITION SOURCE CONTROL

**A104.1 General.** Ignition sources shall be controlled in accordance with Sections A104.2 through A104.10.

**A104.2 Objective.** Regulations in this section are intended to provide the minimum requirements to prevent the occurrence of wildfires.

**A104.3 Clearance from ignition sources.** Clearance between ignition sources and grass, brush or other combustible materials shall be maintained at not less than 30 feet (9144 mm).

**A104.4 Smoking.** Where required by the code official, signs shall be posted stating NO SMOKING. ~~Persons shall not smoke within 15 feet (4572 mm) of combustible materials or nonfire-smart vegetation.~~ Lighting, igniting or otherwise setting fire to or smoking tobacco, cigarettes, pipes, cigars, joints, or other device used to burn or heat a substance for inhalation in Wildland-Urban Interface areas are prohibited.

**Exception:** Places of habitation or in the boundaries of established smoking areas or campsites as designated by the code official.

**A104.5 Equipment and devices generating heat, sparks or open flames.** Equipment and devices generating heat, sparks or open flames capable of igniting nearby combustibles shall not be used in wildland-urban interface areas without a permit from the code official. See Berkeley Fire Code Sections 308.1.5 Open Flame Devices in Wildfire Risk Areas and 308.1.5.1 Signals and Markers.

**Exception:** Use of approved equipment within inhabited premises or designated campsites that are not less than 30 feet (9144 mm) from grass-, grain-, brush- or forest-covered areas.

**A104.6 Fireworks.** Fireworks shall not be used or possessed in wildland-urban interface areas.

**Exception:** Fireworks allowed by the code official under permit in accordance with the California Fire Code where not prohibited by applicable local or state laws, ordinances and regulations.

**A104.6.1 Authority to seize.** The code official is authorized to seize, take, remove or cause to be removed fireworks in violation of this section.

**A104.7 Outdoor fires.** Outdoor fires in wildland-urban interface areas shall comply with Sections A104.7.1 through A104.7.3.

**A104.7.1 General.** Persons shall not build, ignite or maintain any outdoor fire of any kind for any purpose in or on any wildland-urban interface area, except by the authority of a written permit from the code official.

**Exception:** Outdoor fires within inhabited premises or designated campsites where such fires are in a permanent barbecue, portable barbecue, outdoor fireplace, incinerator, fire pits or grill and are not less than 30 feet (9144 mm) from any combustible material or *nonfire-smart* vegetation.

**A104.7.2 Permits.** Permits shall incorporate such terms and conditions that will reasonably safeguard public safety and property. Outdoor fires shall not be built, ignited or maintained in or on hazardous fire areas under any of the following conditions:

1. When red flag conditions exist as defined by the National Oceanic and Atmospheric Administration.
- ~~2.4.~~ When high winds are blowing.
- ~~3.2.~~ When a person 17 years old or over is not present at all times to watch and tend such fire.
- ~~4.3.~~ When a public announcement is made that open burning is prohibited. Permanent barbecues, portable barbecues, outdoor fireplaces, fire pits or grills shall not be used if solid or liquid fueled.

**A104.7.3 Restrictions.** Persons shall not use a permanent barbecue, portable barbecue, outdoor fireplace, incinerator, fire pit or grill for the disposal of rubbish, trash or combustible waste material.

**A104.8 Incinerators, outdoor fireplaces, permanent barbecues, fire pits and grills.** Incinerators, outdoor fireplaces, permanent barbecues, fire pits and grills shall not be built, installed or maintained in wildland-urban interface areas without prior approval of the code official. Existing incinerators, outdoor fireplaces, fire pits, permanent barbecues and grills shall be maintained in good repair and in a safe condition at all times. Openings in such appliances shall be provided with an approved spark arrester, screen or door.

**Exception:** When approved, unprotected openings in barbecues and grills necessary for proper functioning shall be allowed.

**A104.8.1 Maintenance.** Incinerators, outdoor fireplaces, permanent barbecues and grills shall be maintained in good repair and in a safe condition at all times. Openings in such appliances shall be provided with an approved spark arrestor, screen or door.

**Exception:** Where approved by the code official, unprotected openings in barbecues and grills necessary for proper functioning.

**A104.9 Reckless behavior.** The code official is authorized to stop any actions of a person or persons if the official determines that the action is reckless and could result in an ignition of fire or spread of fire.

**A104.10 Planting vegetation under or adjacent to energized electrical lines.** Vegetation that, at maturity, would grow to within 10 feet (3048 mm) of the energized conductors shall not be planted under or adjacent to energized power lines.

**A104.11 Tracer Bullets, Tracer Charges, Rockets and Model Aircraft.** Tracer bullets and tracer charges shall not be possessed, fired or caused to be fired into or across Wildland-Urban Interface areas. Rockets, model planes, gliders and balloons powered with an engine, propellant or other feature liable to start or cause fire shall not be fired or projected into or across Wildland-Urban Interface Areas.

**A104.12 Explosives and Blasting.** Explosives shall not be possessed, kept, stored, sold, offered for sale, given away, used, discharged, transported or disposed of within Wildland-Urban Interface areas except by permit from the code official.

**A104.13 Apiaries.** Lighted and smoldering material shall not be used in connection with smoking bees in or upon Wildland-Urban Interface areas except by permit from the code official.

## **SECTION A105—CONTROL OF STORAGE**

**A105.1 General.** In addition to the requirements of the California Fire Code, storage and use of the materials shall be in accordance with Sections A105.2 through A105.4.2.

**A105.2 Hazardous materials.** Hazardous materials in excess of 10 gallons (37.8 L) of liquid, 200 cubic feet (5.66 m<sup>3</sup>) of gas, or 10 pounds (4.54 kg) of solids require a permit and shall comply with nationally recognized standards for storage and use.

**A105.3 Explosives.** Explosives shall not be possessed, kept, stored, sold, offered for sale, given away, used, discharged, transported or disposed of within wildland-urban interface areas, except by permit from the code official.

**A105.4 Combustible materials.** Outside storage of combustible materials such as, but not limited to, wood, rubber tires, building materials or paper products shall comply with the other applicable sections of this code and this section.

**A105.4.1 Individual piles.** Individual piles shall not exceed 5,000 square feet (465 m<sup>2</sup>) of contiguous area. Piles shall not exceed 50,000 cubic feet (1416 m<sup>3</sup>) in volume or 10 feet (3048 mm) in height.

**A105.4.2 Separation.** A clear space of not less than 40 feet (12 192 mm) shall be provided between piles. The clear space shall not contain combustible material or *nonfire-smart* vegetation.

## SECTION A106—DUMPING

**A106.1 Waste material.** Waste material shall not be placed, deposited or dumped in wildland-urban interface areas or in, on or along trails, roadways or highways or against structures in wildland-urban interface areas.

**Exception:** Approved public and approved private dumping areas.

**A106.2 Ashes and coals.** Ashes and coals shall not be placed, deposited or dumped in or on wildland-urban interface areas.

### Exceptions:

1. In the hearth of an established fire pit, camp stove or fireplace.
2. In a noncombustible container with a tightfitting lid, which is kept or maintained in a safe location not less than 10 feet (3048 mm) from *nonfire-smart* vegetation or structures.
3. Where such ashes or coals are buried and covered with 1 foot (305 mm) of mineral earth not less than 25 feet (7620 mm) from *nonfire-smart* vegetation or structures.

## SECTION A107—PROTECTION OF PUMPS AND WATER STORAGE FACILITIES

**A107.1 General.** The reliability of the water supply shall be in accordance with Sections A107.2 through A107.5.

**A107.2 Objective.** The intent of this section is to increase the reliability of water storage and pumping facilities and to protect such systems against loss from intrusion by fire.

**A107.3 Fuel modification area.** Water storage and pumping facilities shall be provided with a defensible space of not less than 30 feet (9144 mm) clear of nonfire-resistive vegetation or growth around and adjacent to such facilities.

Persons owning, controlling, operating or maintaining water storage and pumping systems requiring this defensible space are responsible for clearing and removing *nonfire-smart* vegetation and maintaining the defensible space on the property owned, leased or controlled by said person.

**A107.4 Trees.** Portions of trees that extend to within 30 feet (9144 mm) of combustible portions of water storage and pumping facilities shall be removed.

**A107.5 Protection of electrical power supplies.** Where electrical pumps are used to provide the required water supply, such pumps shall be connected to a standby power source to automatically maintain electrical power in the event of power loss. The standby power source shall be capable of providing power for not less than 2 hours in accordance with Chapter 27 of the California Building Code, Section 1203 of the California Fire Code and the California Electrical Code.

**Exception:** A standby power source is not required where the primary power service to pumps is underground as approved by the code official.

**SECTION A108—LAND USE LIMITATIONS**

**A108.1 General.** Temporary fairs, carnivals, public exhibitions and similar uses must comply with all other provisions of this code in addition to enhanced ingress and egress requirements.

**A108.2 Objective.** The increased public use of land or structures in wildland-urban interface areas increases the potential threat to life safety. The provisions of this section are intended to reduce that threat.

**A108.3 Permits.** Temporary fairs, carnivals, public exhibitions or similar uses shall not be allowed in a designated wildland-urban interface area, except by permit from the code official.

Permits shall incorporate such terms and conditions that will reasonably safeguard public safety and property.

**A108.4 Access roadways.** In addition to the requirements in Section 403, access roadways shall be not less than 24 feet (7315 mm) wide and posted NO PARKING. Two access roadways shall be provided to serve the permitted use area.

Where required by the code official to facilitate emergency operations, approved emergency vehicle operating areas shall be provided.

**SECTION A109—REFERENCED STANDARDS**

**A109.1 General.** See Table A109.1 for standards that are referenced in various sections of this appendix. Standards are listed by the standard identification with the effective date, standard title and the section or sections of this appendix that reference the standard.

| <b>TABLE A109.1—REFERENCED STANDARDS</b> |                                   |                                   |
|------------------------------------------|-----------------------------------|-----------------------------------|
| <b>STANDARD ACRONYM</b>                  | <b>STANDARD NAME</b>              | <b>SECTIONS HEREIN REFERENCED</b> |
| <i>CBC—25</i>                            | <i>California Building Code</i>   | <i>A107.5</i>                     |
| <i>CFC—25</i>                            | <i>California Fire Code</i>       | <i>A104.6, A105.1, A107.5</i>     |
| <i>CEC—25</i>                            | <i>California Electrical Code</i> | <i>A107.5</i>                     |

**Section 2.** Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther

King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

\* \* \* \* \*

**Chapter 49 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.**

**CHAPTER 49 – REQUIREMENTS FOR WILDLAND-URBAN INTERFACE FIRE AREAS**

**SECTION 4902 DEFINITIONS**

**Section 4902.1 General.** *For the purpose of this chapter, certain terms are defined as follows:*

**DIRECTOR.** Director of the California Department of Forestry and Fire Protection (CAL FIRE).

**FIRE PROTECTION PLAN.** A document prepared for a specific premises, project or development, either existing or proposed for a Wildland-Urban Interface (WUI) area. It describes ways to minimize and mitigate potential for loss from wildfire exposure.

**FIRE HAZARD SEVERITY ZONES.** Geographical areas designated pursuant to California Public Resources Codes, Sections 4201 through 4204 and classified as Very High, High, or Moderate in State Responsibility Area or as Local Agency Very High Fire Hazard Severity Zones designated pursuant to California Government Code, Sections 51175 through 51189.

The California Code of Regulations, Title 14, Section 1280 entitles the maps of these geographical areas as "Maps of the Fire Hazard Severity Zones in the State Responsibility Area of California."

**FLATLANDS MITIGATION AREA (ZONE 1)** encompasses the entire City of Berkeley except for areas in the Hills Mitigation Area, Panoramic Mitigation Area and Grizzly Peak Mitigation Area.

**FUEL BREAK.** A natural or human caused change in fuel characteristics which affects fire behavior so that fires burning into them can be more readily controlled (NWCG PMS 205).

**FIRE-RESISTANT VEGETATION.** Plants, shrubs, trees and other vegetation that exhibit properties, such as high moisture content, little accumulation of dead vegetation, and low sap or resin content, that make them less likely to ignite or contribute heat or spread flame in a fire than native vegetation typically found in the region.

[Note: The following sources contain examples of types of vegetation that can be considered fire-resistant vegetation (Fire-resistant Plants for Home Landscapes, A Pacific Northwest Extension publication; Home Landscaping for Fire, University of California Division of Agriculture and Natural Resources; Sunset Western Garden Book)].

**GRIZZLY PEAK MITIGATION AREA (ZONE 4)** encompasses those areas of the city east of Grizzly Peak Boulevard to the city boundary.

Homes addressed on, or with a structural frontage on either side of Grizzly Peak Boulevard are included in the area.

The Grizzly Peak Mitigation Area is designated as a Very-High Fire Hazard Severity Zone.

**HILLS MITIGATION AREA (ZONE 2)** encompasses those areas designated as Very High or High Fire Hazard Severity Zones that are not included in the Grizzly Peak Mitigation Area or Panoramic Mitigation Area.

This area includes areas of the City east / north east of the line formed by these roads. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:

- a. The Arlington Avenue from the Kensington Border to Marin Avenue
- b. Sutter Street from the Southern portal of the Northbrae Tunnel to Eunice Street
- c. Eunice Street from Sutter Street to Spruce Street
- d. Spruce Street from Eunice Street to Hearst Avenue
- e. Gayley Road from Hearst Avenue to Stadium Rim Way
- f. Piedmont Avenue from Stadium Rim Way to Dwight Way
- g. Warring Street from Dwight Way to Derby Street
- h. Belrose Avenue from Derby Street to Garber Street
- i. Claremont Boulevard from Garber Street to Claremont Avenue
- j. Claremont Avenue from Claremont Boulevard to the Oakland Border
- k. Tunnel Road from Ashby Avenue to the Oakland Border

**IGNITION-RESISTANT MATERIAL.** A type of building material that complies with the requirements in Section 704A.2 in the ~~California~~-Berkeley Building Code.

**LOCAL RESPONSIBILITY AREAS (LRA).** Areas of the state in which the financial responsibility of preventing and suppressing fires is the primary responsibility of a city, county, city and county, or district.

**PANORAMIC MITIGATION AREA (ZONE 3)** encompasses those areas of the city bounded by the line formed by these roads and by the City Limit to the east.

The entirety of the Panoramic Mitigation Area is designated as a Very High Fire Hazard Severity Zone. Homes addressed on, or with a structural frontage on either side of these road segments are included in the zone:

- a. Canyon Road from the Oakland border to Stadium Rim Way
- b. Stadium Rim Way from Canyon Road to Bancroft Way
- c. Bancroft Way from Stadium Rim Way to Prospect Street

- d. Prospect Street from Bancroft Way to Bancroft Steps
- e. Bancroft Steps from Prospect Street to Warring Street
- f. Bancroft Way from Warring Street to Piedmont Avenue
- g. Piedmont Avenue from Bancroft Way to Dwight Way
- h. Dwight Way from Piedmont Avenue to the Oakland border

**STATE RESPONSIBILITY AREA (SRA).** Lands that are classified by the Board of Forestry pursuant to Public Resources Code Section 4125 where the financial responsibility of preventing and suppressing wildfires is primarily the responsibility of the state.

**WILDFIRE.** Any uncontrolled fire spreading through vegetative fuels that threatens to destroy life, property, or resources as defined in Public Resources Code, Sections 4103 and 4104.

**WILDFIRE EXPOSURE.** One or a combination of radiant heat, convective heat, direct flame contact and burning embers being projected by vegetation fire to a structure and its immediate environment.

**WILDLAND-URBAN INTERFACE (WUI).** A geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code, Sections 4201 through 4204, and Government Code, Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires.

## **SECTION 4903 PLANS**

**Section 4903.3 Submittal, approval and fees.** When required to submit a Fire Protection Plan or Vegetation Management Plan for any reason the responsible party shall prepare or cause to be prepared a Fire Protection Plan in accordance with the latest standards of the Berkeley Fire Department. The Fire Protection Plan shall be submitted to, reviewed and approved by the Berkeley Fire Department and shall be enforced and maintained by the responsible party or their designated agent. The Berkeley Fire Department may charge an appropriate fee for the review, approval and processing of the Fire Protection Plan in accordance with the hourly rate established by City Council resolution.

## **SECTION 4905 WILDFIRE PROTECTION BUILDING CONSTRUCTION**

**Section 4905.2 Construction methods and requirements within established limits.** Within the limits established by law, construction methods intended to mitigate wildfire exposure shall comply with the wildfire protection building construction requirements contained in the Berkeley Building Code and Berkeley Residential Code, including the following:

1. Chapter 7A of the Berkeley Building Code (B.B.C), Berkeley Municipal Code Section 19.28.030.

2. Section R337 of the Berkeley Residential Code (B.R.C.), Berkeley Municipal Code Section 19.29.050.
3. California Referenced Standards Code, Chapter 12-7A.

## **SECTION 4907 DEFENSIBLE SPACE**

Property owners are not required or authorized by this code to enter the properties of another person to implement the requirements of this Section.

### **Section 4907.3 Requirements.**

5. The Fire Code Official may require a property owner to perform hazardous vegetation and fuel management on their land to maintain defensible space up to 100 feet from structures located on adjacent properties.

### **Section 4907.4 Mitigations Required.**

A person who owns, leases, controls, operates, or maintains lands shall at all times maintain:

1. Zone 1: 5 to 30 feet from any structure:
  - a. Remove any privacy hedges or contiguous vegetation that will create a pathway for fire to reach a Structure.
  - b. Maintain 6 feet of vertical clearance between branches and all other parts of trees overhanging the roof or other portion of any Structure or attached deck.
  - c. Maintain any tree, shrub, or other plant adjacent to or overhanging any Structure or attached deck free of dead branches, dead limbs, or other Combustible Material.
  - d. Maintain the roof and roof gutters of any structure, and the surface of any attached deck free of leaves, needles, or other vegetative materials.
  - e. Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are greater than 8 feet above the ground or surface fuels.
  - f. Remove all branches within 10 feet of any chimney or stovepipe outlet.
  - g. Storage of firewood, lumber, or other Combustible Material is not permitted.

- h. Keep low-growing shrubs, no higher than 6 feet in height, spaced apart or in small groupings of no more than 3 shrubs with a maximum aggregate diameter of 10 feet. Shrub groupings must be separated from other shrubs or shrub groupings by 15 feet such that no continuous path of vegetation is created. Where shrubs are located below or within a tree's drip line, the lowest tree branch shall be a minimum of three times the height of the understory shrubs or 10 feet, whichever is greater.
  - i. If there are multiple structures, such as a shed, hot tub, and playset, ensure these structures are spaced at least 10 feet apart. Have at most three (3) of these structures within 30 feet of a building or structure .
  - j. Relocate exposed firewood piles outside of Zone 1 unless they are completely covered in a fire-resistant material.
- 2. Zone 2: 30 to 100 feet from any structure:
  - a. All exposed wood piles must have a minimum of ten feet (10 ft.) of clearance, down to bare mineral soil, in all directions.
  - b. Create horizontal and vertical spacing among shrubs and trees using the "Fuel Separation" method, the "Continuous Tree Canopy" method or a combination of both to achieve defensible space clearance requirements. Further guidance regarding these methods is contained in the State Board of Forestry and Fire Protection's, "General Guidelines for Creating Defensible Space, February 8, 2006," incorporated herein by reference.
- 3. For both Zones 1 and 2:
  - a. Remove vegetative and combustible material capable of transmitting fire to a structure as determined by the Fire Code Official.
  - b. Dead and dying woody surface fuels and aerial fuels shall be removed. Loose surface litter, normally consisting of fallen leaves or needles, twigs, bark, cones, and small branches, shall be permitted to a maximum depth of three inches (3 in.).
  - c. Cut annual grasses and forbs down to a maximum height of four inches (4 in.).
  - d. Non-irrigated brush is not permitted.
  - e. Vertical Spacing: Limb trees by removing hanging bark, debris and branches that are within six feet (6 ft.) of the ground, or three times the height of the understory vegetation, whichever is greater. Where a tree is not adaptable to limbing to the height described above, use a combination of limbing and/or modify and remove fuels adjacent to and underneath the tree to provide clearance above grade that is equivalent to three times the height of the tallest understory fuel.

- f. Maintain horizontal spacing between shrubs:
  - i. Flat or mild slope (less than 20%): Two times the height of the shrub.
  - ii. Mild to moderate slope (20-40%): Four times the height of the shrub
  - iii. Moderate to steep slope (greater than 40%): Six times the height of the shrub
- g. Maintain space between tree canopies:
  - i. Flat or mild slope (less than 20%): 10 feet.
  - ii. Mild to moderate slope (20-40%): 20 feet.
  - iii. Moderate to steep slope (greater than 40%): 30 feet.
- h. New trees shall be planted and maintained so that the tree's drip line at maturity is a minimum of 10 feet from any structure or the canopy of other trees.

**Section 4907.6 Specific requirements.** Effective January 1, 2026 the Grizzly Peak Mitigation Area and Panoramic Mitigation Area shall be subject to 4907.6 instead of 4907.4.

A person who owns, leases, controls, operates, or maintains lands shall at all times maintain:

1. Zone 0: 0 to 5 feet from any structure:
  - a. Maintain all areas within five (5) horizontal feet of any structure, outbuildings, attached deck or stairs, and the area under attached decks and stairs free of vegetative and non-vegetative combustible material.
    - i. This includes but is not limited to shrubs, vegetative ground cover, climbing vines, combustible boards, timbers, firewood, debris, synthetic lawn, wood mulch products, playsets, plastic trash and recycle cans, trellises, pergolas, shade coverings, planters, attached window boxes, privacy walls, boats, RVs, and other material that could be ignited by embers, radiant heat, or direct flame.
    - ii. Hardscape materials, such as gravel, pavers, concrete, and other noncombustible mulch materials are permitted.
    - iii. Exception: Plants in pots are allowable if they are in areas that are not directly beneath, above, or adjacent to a window or eave; are kept in an unaffixed, non-combustible pot or container that is no larger than 5-gallon capacity; and set apart by 1.5 times the height of the plant or 12 inches, whichever is greater, from the structure and each other. These plants shall be no greater than 18 inches in height. Dead or dying material on, around and under the plants shall be removed.

- iv. Exception: Hot tubs may be installed within five (5) horizontal feet of a structure, provided they comply with all Zone 0 clearance requirements applicable to structures.
    - b. No trees are permitted in Zone 0.
    - c. Exception: If the bole of a tree is present within Zone 0, that tree is permitted if it is taller than the adjacent Building or Structure's roof ridgeline, does not have any dead and dying branches;
      - i. All live tree branches shall be kept:
        - 1. Ten feet (10') above the adjacent building or structure's roof ridgeline;
        - 2. Ten feet (10') away from chimneys and stovepipe outlets; and
        - 3. Five feet (5') away from the sides of any Building, Structure, attached deck or stairs, and hot tubs within five (5) feet of a structure.
    - d. The roof and rain gutters of a Building or Structure shall be kept clear of leaves, needles, and vegetative material.
    - e. Existing fences that are directly attached to a Building or Structure shall have a five foot (5 ft) non-combustible span at the point of attachment. After the effective date of this regulation, no new sections of combustible fence (parallel or perpendicular) are permitted within 5 feet of a building or structure including an attached deck.
    - f. Outbuildings are not permitted in Zone 0, unless constructed according to the standards in Chapter 7A (commencing with Section 701A.1) of Part 2 of Title 24 of the California Code of Regulations. Outbuildings that meet these standards shall be considered part of the Building or Structure.
- 2. Zone 1: 5 to 30 Feet from any structure:
  - a. Remove any privacy hedges or contiguous vegetation that will create a pathway for fire to reach a Structure.
  - b. Keep low-growing shrubs, no higher than 6 feet in height, spaced apart or in small groupings of no more than 3 shrubs with a maximum aggregate diameter of 10 feet. Shrub groupings must be separated from other shrubs or shrub groupings by 15 feet such that no continuous path of vegetation is created. Where shrubs are located below or within a tree's drip line, the lowest tree branch shall be a minimum of three times the height of the understory shrubs or 10 feet, whichever is greater.
  - c. If there are multiple structures, such as a shed, hot tub, and playset, ensure these structures are spaced at least 10 feet apart. Have at most three (3) of these structures within 30 feet of a building or structure.

- d. Relocate exposed firewood piles outside of Zone 1 unless they are completely covered in a fire-resistant material.
3. Zone 2: 30 to 100 feet from any structure:
    - a. All exposed wood piles must have a minimum of ten feet (10 ft.) of clearance, down to bare mineral soil, in all directions.
    - b. Create horizontal and vertical spacing among shrubs and trees using the "Fuel Separation" method, the "Continuous Tree Canopy" method or a combination of both to achieve defensible space clearance requirements. Further guidance regarding these methods is contained in the State Board of Forestry and Fire Protection's, "General Guidelines for Creating Defensible Space, February 8, 2006," incorporated herein by reference.
  4. For both Zones 1 and 2:
    - a. Remove vegetative and combustible material capable of transmitting fire to a structure as determined by the Fire Code Official.
    - b. Dead and dying woody surface fuels and aerial fuels shall be removed. Loose surface litter, normally consisting of fallen leaves or needles, twigs, bark, cones, and small branches, shall be permitted to a maximum depth of three inches (3 in.).
    - c. Cut annual grasses and forbs down to a maximum height of four inches (4 in.).
    - d. Non-irrigated brush is not permitted.
    - e. Vertical Spacing: Limb trees by removing hanging bark, debris and branches that are within six feet (6 ft.) of the ground, or three times the height of the understory vegetation, whichever is greater. Where a tree is not adaptable to limbing to the height described above, use a combination of limbing and/or modify and remove fuels adjacent to and underneath the tree to provide clearance above grade that is equivalent to three times the height of the tallest understory fuel.
    - f. Maintain horizontal spacing between shrubs:
      - i. Flat or mild slope (less than 20%): Two times the height of the shrub.
      - ii. Mild to moderate slope (20-40%): Four times the height of the shrub
      - iii. Moderate to steep slope (greater than 40%): Six times the height of the shrub
    - g. Maintain space between tree canopies:
      - i. Flat or mild slope (less than 20%): 10 feet.
      - ii. Mild to moderate slope (20-40%): 20 feet.
      - iii. Moderate to steep slope (greater than 40%): 30 feet.

- h. New trees shall be planted and maintained so that the tree's drip line at maturity is a minimum of 10 feet from any structure or the canopy of other trees.

**Section 4907.5 Corrective Actions.** The fire department is authorized to take enforcement actions as necessary to achieve compliance with Chapter 49 of this code, including but not limited those actions specified in Sections 104.13 ("Authority to arrest and issue citations"), 112.4 ("Violation penalties") and 114.7 ("Summary abatement") of this code, and as authorized by Berkeley Municipal Code, Chapter 1.24, "Abatement of Nuisances", and in accordance with all other applicable portions of the Berkeley Municipal Code. Corrective actions may also include the use of abatement warrants and the imposition of property liens as appropriate and in accordance with law.

**To:** Farimah Brown, Berkeley City Attorney  
**From:** Richard Illgen, Member, EMBER Working Group  
**cc:** EMBER Working Group  
**Date:** Date  
**Re:** EMBER Violations and Appeals

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I am a member of the EMBER Working Group that is reviewing the recently enacted EMBER portions of the Berkeley Fire Code (Chapter 49 Requirements for Wildland-Urban Interface Fire Areas) and related provisions. As part of this review, the Working Group is reviewing the Violations (Section 112) and Appeals (Section 111) Sections of the Berkeley Fire Code as these sections apply to the EMBER portion of the Fire Code.

The Working Group's general concerns include: how the Violations and Appeals Sections will work with EMBER, removing the misdemeanor penalty from EMBER, and recommendations on making the violations and appeals more workable and fair.

As part of this review, the Working Group requested that I ask some questions of the City Attorney's Office regarding the Violations and Appeals section as applied to EMBER.

The Working Group would appreciate your Office coming to a meeting to discuss the EMBER questions. I am also available to meet with your Office on this matter. I also enclose a draft, proposed violation and appeal sections.

Questions and Analysis Regarding Berkeley Fire Code Violations (Section 112) and Appeals (Section 111) as applied to EMBER (Chapter 49 – Requirements for Wildland-Urban Interface Fire Areas).

Violations. Berkeley Fire Code Section 112 Automatic Misdemeanors for Violations.

1. There is no exception in Section 112 for EMBER.
  - a. Therefore, do daily misdemeanors, infractions, and administrative penalties apply to EMBER?
2. Violations are automatically misdemeanors, unless reduced by the Enforcement Official.
  - a. There appear to be no standards for when and how misdemeanors may not be charged daily or be reduced to a lesser penalty.

- b. There are no standards or guidance in Section 112, only that the Fire Enforcement Official or the City Attorney may apply a different penalty.
- 3. Does BMC 1.28 apply to administrative citations issued for EMBER violations?
- 4. Pursuant to Resolution 61,748, Administrative Penalties are \$1,000 but may be reduced pursuant to guidelines set out in the Resolution. The Resolution does not provide specific amounts for penalty reductions. Because Fire Code violations can be infractions, are the lesser penalties as provided for in Gov. Code Sec. 2900 (b) or (c) the amounts for administrative penalties? See also, Gov. Code Sec. 51185.
- 5. Has the City Council adopted any ordinances or resolutions providing standards or addressing how misdemeanors can be reduced to a lesser penalty?
- 6. Without standards or rules addressing how misdemeanors can be reduced, how is enforcement not arbitrary or violative of due process?
- 7. There are no standards or rules in an ordinance or Council resolution for issuing violations or penalties.
  - a. How many days does a property owner have to correct a violation? See Gov. Code Sec.53069.4(a)(2)(A).
  - b. Are the penalties the same for the severity of the violation?
    - i. For example, removing one plant versus removing a fence attached to a house.
- 8. There are no standards or rules in an ordinance or resolution for progressively increasing penalties.
- 9. Fire Code Section provides that "[a] person who owns, leases, operates, or maintains lands . . ." is responsible for the property. How is it determined who gets noticed, is responsible for correcting the violation, and can be penalized?
  - a. Who is penalized for a misdemeanor?
- 10. The Berkeley Fire Department has stated that a property owner can set out a three-year plan to comply with EMBER.
  - a. Where is this in the Berkeley Fire Code?
  - b. Where are the standards or rules for such a plan?
  - c. Does this need to be set out in the Fire Code in order to be enforced?
  - d. Note: the Fire Code only provides for a BFD mandated plan, not a property owner-requested plan. (See BMC Sec. 4903.3)
    - i. Note: Sec. 4903.3 is based on standards provided by BFD and payment of a fee. Where are those standards?

#### Appeals, Fire Code Section 111

- 1. There is no exception in Section 111 for EMBER.
  - a. Section 111.1 "In order to hear and decide appeals of orders, decisions, or determinations made by the fire code official relative to the application and interpretation of this code, an appeal may therefore be taken to the City Council by the applicant or permit holder. . . .

- b. There is no exception in this section for the issuance of penalties, including administrative citations, all of which would necessarily involve an order, decision, or determination regarding the application or interpretation of the fire code.
  - c. In general, specific code sections take precedence over those of general application; therefore, this section appears to apply to EMBER violations, notwithstanding BMC 1.28 (Administrative Citations). This is especially true for subsequently adopted specific codes.
  - d. Even if it is suggested that BMC 1.28 would apply to administrative citation appeals, would the Hearing Officer be authorized to rule on applications and interpretations of the Fire Code, particularly given Section 111.1's language assigning such appeals to the Section 111.1 process?
2. Appellants are given less than 10 days to appeal.
- a. A notice of appeal must be filed within 10 days from the date of mailing. This gives an appellant no more than 9 days to appeal and possibly as few as 5. Does this provide an appellant with adequate due process?
    - i. It is not just a notice, but must also include the grounds for appeal.
    - ii. Property owners may need to get an attorney, documents, and/or experts to respond to violation.
  - b. Unlike other time frames for responding to notices served by mail, there is no additional 5 days to file a responding document. (See, e.g. Cal Code Civ.Pro., Sec 1005b.)
  - c. There is no provision for an extension of time.
  - d. The appellant's 10 days to respond after the violation's mailing is in contrast to the Fire Code Official's response, who has 30 days to provide documentation to the City Council.
  - e. There is no requirement that the BFD response to the appeal be provided to the appellant.
  - f. It is unclear if the Council is required to agendaize the matter. Does a Councilmember need to request the matter be agendaized in order for it to be considered by the full Council. If the Council takes no action, it can be dismissed within 30 days without a hearing.
    - i. What happens during a Council recess?
    - ii. The only provision for notifying the appellant of a hearing is if the City Council determines hearing is warranted. BMC Sec. 111.1c.
  - g. It appears that the Council need not agendaize the matter; it may be dismissed without hearing if no action is taken within 30 days.
  - h. The appeal can be dismissed if no decision is made within 90 days.
  - i. There is no reference in Section 111 regarding the filing of an administrative writ to contest the decision.

- j. Is there a notice of decision issued to the appellant when the appeal is resolved by not hearing the matter, so it can be determined when the period for filing an administrative writ begins to run?
3. Is a violation or determination by the Fire Official or City Council appealable to the State Fire Marshall? See 19 CA Code of Regs 2.04.

## Proposed Modifications of Berkeley Fire Code for WUI Appeals and Violations

### Section 111 Means of Appeal

111.5 This Section 111, Means of Appeal, shall not apply to appeals arising from Section [] Wildland Urban Interface Regulations. Appeals from Wildland Urban Interface notices or violations shall be in accordance with Section [] Enforcement and Appeals from Wildland Urban Interface Decisions.

### Section 112 Violations

112.5 This Section 112, Violations, shall not apply to enforcement arising from Section [] Wildland Urban Interface Regulations. Appeals from Wildland Urban Interface notices or violations shall be in accordance with Section [] Enforcement and Appeals from Wildland Urban Interface Decisions.

DRAFT



Eric Weaver &lt;ericmartinweaver@gmail.com&gt;

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## Citation Process

2 messages

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**Winnacker, Dave** <DWinnacker@berkeleyca.gov>

Thu, Sep 18, 2025 at 9:29 AM

To: Eric Weaver &lt;ericmartinweaver@gmail.com&gt;

Eric,

Following up our conversation following the workgroup meeting yesterday, I reviewed the internal Administrative Citation process. In relevant part:

**BEFORE ISSUING A CITATION--**

**GIVE THE VIOLATOR A CHANCE TO CORRECT THE VIOLATION**

Before issuing a citation, give the violator a reasonable chance to correct the violation-- remember, this may be the first time he or she has heard about it.

*Note: From here on out, everything should be in writing.*

### **A. First Notice**

Send a "first notice and order to correct" to the violator. The purpose of this letter is to **politely**:

1. Notify the violator of the specific violation;
2. Explain how it must be corrected (*i.e.*, removal of brush, obtaining a building permit, getting a dog license, etc.);
3. Set a reasonable deadline for doing so.

### **B. Penalties**

Maximum administrative penalties, well beyond those permitted for infractions, have been established by Council resolution. **However, until we have gained experience with administrative citations, penalties should be the same as for infractions:**

\$100 for the first violation

\$200 for the second violation

\$500 for the third and subsequent violations.

In the case of exceptional violations that have serious consequences, a higher penalty may be imposed. **You should consult with the City Attorney's office before imposing any penalty higher than \$500.00.**

Please let me know if this answers your questions. I am available for a call to discuss as needed.

Best,

Dave

510.684.3021

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**From:** Arnold, Colin  
**Sent:** Thursday, September 18, 2025 8:54 AM  
**To:** Winnacker, Dave <DWinnacker@berkeleyca.gov>  
**Subject:** Citations

Internal



Colin Arnold • Interim Assistant Fire Chief  
Wildland Urban Interface Division  
[carnold@berkeleyca.gov](mailto:carnold@berkeleyca.gov) • 510-981-5620

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**Eric Weaver** <ericmartinweaver@gmail.com>  
To: "Winnacker, Dave" <DWinnacker@berkeleyca.gov>

Thu, Sep 18, 2025 at 10:00 AM

[Home Table of Contents](#)**§ 2.04. Appeals Relating to Application of These Regulations.**

19 CA ADC § 2.04

Barclays Official California Code of Regulations

Barclays California Code of Regulations  
 Title 19. Public Safety  
 Division 1. State Fire Marshal  
 Chapter 1. General Fire and Panic Safety Standards  
 Subchapter 1. Administration  
 Article 2. Alternate Means of Protection, and Appeals

19 CCR § 2.04

**§ 2.04. Appeals Relating to Application of These Regulations.**Currentness

(a) When any person is affected by the application of nonbuilding regulations by the State Fire Marshal or his salaried assistants and such person believes that such regulations are being applied incorrectly, such person may appeal the decision of the State Fire Marshal to the State Board of Fire Services. The board shall not consider any such appeal unless the matter has come to the attention of the State Fire Marshal and he has rendered a decision in writing. Any appeal to the board shall be made by the affected person or his agent in writing in the form and manner prescribed by the board. The decision of the board shall be binding upon the State Fire Marshal. Any decision made by the board shall be for the instant case only and shall not be construed as setting precedent for general application.

(b) When any person is affected by the application of building regulations by the State Fire Marshal or his salaried assistants and such person believes that such regulations are being applied incorrectly, such person may appeal to the State Building Standards Commission pursuant to Chapter 5 (commencing with Section 18945) of Part 2.5, Health and Safety Code.

(c) When any local agency having authority to enforce these regulations and any person adversely affected by any regulation, rule, omission, interpretation, decision, or practice of such agency respecting building standards both wish to appeal the issue, then both parties may jointly appeal such condition to the State Building Standards Commission for resolution.

**Credits**

NOTE: Authority cited: Sections 12081, 13108, 13143, 13143.6, 13211, 17920.7, 17921 and 18897.3, Health and Safety Code.  
 Reference: Sections 12000-12401, 13100-13146.5, 13210-13216, 17920.7, 17921 and 18897-18897.7, 18945, Health and Safety Code.

**HISTORY**

1. New section filed 2-7-75; effective thirtieth day thereafter (Register 75, No. 6).
2. Amendment filed 11-13-80; effective thirtieth day thereafter (Register 80, No. 46).
3. Change without regulatory effect of NOTE filed 8-24-88 (Register 88, No. 36).

This database is current through 10/17/25 Register 2025, No. 42.

Cal. Admin. Code tit. 19, § 2.04, 19 CA ADC § 2.04

**END OF DOCUMENT**

Draft Enforcement and Appeals re City of Berkeley Fire Code Chapter 49 – Requirements For Wildland-Urban Interface Fire Areas

This Chapter only applies to enforcement and appeals for Berkeley Fire Code Chapter 49 – Requirements For Wildland-Urban Interface Fire Areas

Section 1- Notice of Non-compliance.

- (a) A Notice of Non-Compliance is issued by the City notifying a Property Owner that the Property Owner's property is not in compliance with Chapter 49.
- (b) Prior to issuing a Notice of Non-Compliance, the City shall make reasonable efforts to review with the Property Owner the ways in which the property is not in compliance with Chapter 49. The purpose of enforcement is to encourage Property Owners to come into compliance with Chapter 49. To that extent, enforcement efforts should be informative and collaborative with the Property Owner, so as to gain compliance without the need for fines and other enforcement measures.
- (c) Service. A Notice of Non-Compliance may be served on the Property Owner by personal service or by mail, mailed to the Property Owner at the Property Owner's address set out in the Alameda County Assessor's records. A Notice served by mail shall add five days to any compliance period.
- (d) Time to Comply. A Property Owner shall comply with a Notice of Non-Compliance within the following time periods:
  - (1) 90 days to comply before notice of violation is issued.
  - (2) Exceptions. The following categories of Property Owners have 120 days to comply:
    - (A) Senior (65 or older);
    - (B) Low-to moderate income (120 percent of the area median income);
    - (C) Disabled (state definition of disability)
  - (3) Monetary exception. All work in excess of \$2,000, as estimated by a responsible professional, is carried over to the next year, unless assistance is available to pay for work required in the Notice of Non-Compliance.
- (e) Time to complete work pursuant to Notice of Non-Compliance may be extended further or the length of the compliance period if the property owner shows reasonable, good faith in proceeding to comply with the work required by the notice.
- (f) The compliance period may also be extended for good cause. For example, the infirmity of the Property Owner, the unavailability of contractors or others to perform the work.

- (g) At any time in this process, the Property Owner may give the City permission to enter the property to cure the Non-Compliance. In such cases, the City will invoice the Property Owner for the costs. If the costs are not paid within 6 months, the City may place a lien on the property, which may include all costs of curing the Non-Compliance and the costs of placing the lien on the Property.

#### Section 2 Administrative Citation for violation.

- (a) A Notice of Violation notifies a Property Owner that a Notice of Compliance has not been fully complied with and that the Property Owner will be issued an Administrative Citation as a penalty for non-compliance.
- (b) Property Owner failing to comply with a Notice of Non-compliance within the time frames set forth in Section 1 is considered in violation of Chapter 49 and may be given an administrative citation of \$100 for a first violation and given 90 (or 120 if an exception applies) days to comply with the Notice of Violation.
- (c) A Property Owner who fails to comply with a first notice of violation after the time permitted may be given an administrative citation of \$200, and 90 (or 120 if an exception applies) additional days to comply with the work required in the notice of non-compliance.
- (d) A Property Owner who fails to comply with a second notice of violation after 60 days may be given an additional administrative citation of \$500 and given 90 (or 120 days if an exception applies) additional days to comply with the work required in the notice of non-compliance.
- (e) The time frames to complete work after a Notice of Violation is issued may be extended for good cause by the Enforcement Officer.
- (f) If a Property Owner who has been given three Notices of Violation for the same non-compliance and has failed to complete the work required by the Notice of Non-Compliance within the allowed time, the City may seek permission from the Property Owner or a warrant to enter the property to complete the work. If the warrant is granted permitting the City to enter the property to complete the work, the Property Owner may be charged for the cost of the corrective work and the cost of obtaining the warrant.

#### Section 3. Appeal.

- (a) Board of Appeals. There shall be a Board of Appeal consisting of three members. One member shall be qualified as a Hearing Officer, one shall be qualified by experience and training to pass on the hazards of fire, and one shall be a resident of the City. None of the Board Members may be current or former employees or contractors of the City, except for the Hearing Officer, who may have been a former contractor of

- the City as a Hearing Officer. The Hearing Officer shall serve as the presiding officer of the Board. The members of the Board shall be hired or appointed by the City Manager. The resident member shall serve without compensation.
- (b) A Property Owner may appeal a Notice of Compliance or a Notice of Violation to the Board of Appeals within 30 days after a Notice of Non-Compliance or a Notice of Violation is served. The Appeal document shall set out all grounds for Appeal. Any documents supporting the appeal shall be due within 30 days after filing the appeal, unless the time is extended by the Hearing Officer.
  - (c) Basis for Appeal. A Property Owner may appeal a Notice on the following grounds:
    - (1) The intent of Chapter 49 or any rules applying or interpreting the Chapter have been incorrectly applied or interpreted,
    - (2) Chapter 49 does not apply to the property or circumstances of the Notice of Non-Compliance or Notice of Violation;
    - (3) An equally good or better form of construction for Chapter 49 is proposed;
    - (4) The facts of the Notice are in error,
    - (5) City denied an Alternate Means and Measures Request,
    - (6) Compliance with a Notice may cause substantial harm to the property or neighboring properties (such as mudslides)
    - (7) Such other good cause (such as incapacity or lack of financial resources to comply).
  - (d) The Board shall not have the authority to waive requirements of Chapter 49 or to interpret the administration of this Chapter.
  - (e) Stay. The filing of an Appeal stays any action on the Notice until the Appeal is decided by the Board, except in the case of an immediate danger.
  - (f) Final City Decision. The Board's decision is the final decision of the City.
  - (g) Open hearing. All proceedings of the Board shall be publicly noticed and open to the public.
  - (h) City support. The City Clerk shall provide support for the Board as the Board shall require. The City Attorney shall provide such legal support for the Board as the Board shall require.
  - (i) City Review of Appeal. Prior to the Board hearing an Appeal, the City may review the Appeal and may address the issues raised in the Appeal and rescind or modify the Notice at issue. The City and the Property Owner may also engage in negotiations or mediation to seek to resolve the issues in the Notice informally.
  - (j) City response. The City shall have 30 days to respond to an Appeal, unless extended by the Hearing Officer.

- (k) Property Owner Reply. The Hearing Officer may permit a Property Owner to reply to the City's appeal response, if good cause is shown, and set the time frame for the reply.
- (l) Extensions of Time. The Hearing Officer may grant such extensions of time for good cause that either the Property Owner or the City may seek.
- (m) The Board shall establish policies and procedures necessary to carry out its duties consistent with the provisions of this Chapter and applicable law. The procedures shall not require compliance with strict rules of evidence, and shall follow those rules commonly applicable to administrative hearings.
- (n) Decision. The Board may affirm, modify, or reverse a decision of the City with a majority vote.
- (o) Final Decision. The Board's decision is the final decision of the City.

### Section 3. Right of Judicial Review.

- (a) Any person aggrieved by an administrative decision of the Board may obtain review of the Board's decision by filing a petition seeking review in accordance with Government Code Section 53069.4.
- (b) The City is prohibited from seeking review of the Board's decision pursuant to Government Code Section 53069.4.

### Section 4. Right to Request Review by the California Fire Marshall.

- (a) Whenever an Appeal implicates an application or interpretation of the California Fire Code, the Property Owner or the City may appeal the Board's decision to the California Fire Marshall pursuant to 19 CA Code of Regs 2.04.

## SECTION 111 MEANS OF APPEALS

**Section 111.1 ~~Board of appeals established.~~ Appeals Procedure** In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, ~~there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official.~~ an appeal therefore may be taken to the City Council by the applicant or permit holder. Notice of the appeal must be filed with the City Clerk of the City of Berkeley within ten days from the date of mailing of the fire code official's decision to the applicant or permit holder. The notice of appeal shall contain a statement of the reasons for the appeal. The City Clerk shall forward one copy thereof to the fire code official. Within thirty days after the filing of the notice of appeal, the fire code official shall transmit to the City Council all their records pertaining to the decision appealed from.

**Section 111.1.1 Stay of Proceedings** The filing of the notice of appeal shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until determination of the appeal as hereinafter provided, unless the fire code official determines that such a stay could result in an imminent threat to public safety.

**Section 111.3 Qualifications.** ~~The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protection systems, and are not employees of the jurisdiction.~~ **Decisions:** The City Council shall review the action of the fire code official and shall do any one of the following:

- a. Refer the matter back to the fire code official.
- b. If the facts stated in or ascertainable from the application, the Notice of Appeal, the written statement of the fire code official setting forth the reason for their decision, and the other papers, if any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the fire code official. Such decision shall be final.
- c. If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing by mailing a copy of such notice by certified mail to the address of the applicant as stated in the Notice of Appeal, at least ten (10) days before the time fixed for the hearing. The City Council may continue the hearing from time to time.
- d. Following such hearing, the City Council shall reverse, affirm wholly or partly modify any decision of the fire code official, or make any other decisions or determinations or impose such conditions as the facts warrant. Such decision or determination shall be final.
- e. If none of the above actions have been taken by the City Council within thirty (30) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal shall be deemed dismissed.

- f. If the appeal is set for hearing but the disposition of the appeal has not been determined within ninety (90) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal deemed dismissed.

**111.4 Administration.** The fire code official shall take immediate action in accordance with the decision of the Board City Council .

## **SECTION 112 VIOLATIONS**

**Section 112.1 Unlawful acts [Amended subsection].** It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a building, occupancy, premises or system regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code, or to create, maintain or allow to continue any fire hazard.

**Section 112.4 Violation penalties.** Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a [~~SPECIFY OFFENSE~~], ~~punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment~~ misdemeanor, but may be cited or charged, at the election of the enforcing officer or City Attorney, as infractions, subject to an election by the defendant under Penal Code Subsection 17 (d). Each day that a violation continues after due notice has been served shall be deemed a separate offense. In addition to all other legal remedies, civil or criminal (as set forth above), any violation of this code constitutes a public nuisance in accordance with B.M.C Chapter 1.26, and is subject to all provisions of B.M.C. Chapter 1.26, as well as abatement under B.M.C. Chapter 1.24, "Abatement of Nuisances". All such violations are also subject to the issuance of an administrative citation in accordance with B.M.C Chapter 1.28 at the discretion of the enforcing officer or the City Attorney.

## **SECTION 114 UNSAFE STRUCTURES OR EQUIPMENT**

**Section 114.7 Summary abatement.** Where conditions exist that are deemed hazardous to life and property, the fire code official or fire department official in charge of the incident is authorized to abate summarily such hazardous conditions that are in violation of this code. Where the owner does not comply with an abatement order under Section 114.4 within the period specified, the City of Berkeley may perform or cause to be performed the necessary work. The costs incurred shall be recoverable under the procedures in Section 114.7.1

**Section 114.7.1 Abatement process [Additional subsection]** The abatement process shall be conducted in accordance with the notice and hearing requirements of the nuisance abatement provisions of Berkeley Municipal code chapter 1.24, including summary abatements of structures or premises determined by the City of Berkeley to constitute an imminent hazard or emergency condition.

**Chapter 2 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.**



**GOVERNMENT CODE - GOV**

**TITLE 4. GOVERNMENT OF CITIES [34000 - 45345]** ( Title 4 added by Stats. 1949, Ch. 79. )

**DIVISION 3. OFFICERS [36501 - 41805]** ( Division 3 added by Stats. 1949, Ch. 79. )

**PART 2. LEGISLATIVE BODY [36801 - 40592]** ( Part 2 added by Stats. 1949, Ch. 79. )

**CHAPTER 2. Ordinances [36900 - 36937]** ( Chapter 2 added by Stats. 1949, Ch. 79. )

**ARTICLE 1. General [36900 - 36904]** ( Article 1 added by Stats. 1949, Ch. 79. )

**36900.** (a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation determined to be an infraction is punishable by the following:

- (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
- (2) A fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year.
- (3) A fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.

(c) Notwithstanding any other law, a violation of local building and safety codes determined to be an infraction is punishable by the following:

- (1) A fine not exceeding one hundred thirty dollars (\$130) for a first violation.
- (2) A fine not exceeding seven hundred dollars (\$700) for a second violation of the same ordinance within one year.
- (3) (A) A fine not exceeding one thousand three hundred dollars (\$1,300) for each additional violation of the same ordinance within one year of the first violation.  
  
(B) A fine not exceeding two thousand five hundred dollars (\$2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

(d) (1) Notwithstanding any other law, including subdivisions (b) and (c), the violation of a short-term rental ordinance that is an infraction is punishable by the following:

- (A) A fine not exceeding one thousand five hundred dollars (\$1,500) for a first violation.
- (B) A fine not exceeding three thousand dollars (\$3,000) for a second violation of the same ordinance within one year.
- (C) A fine not exceeding five thousand dollars (\$5,000) for each additional violation of the same ordinance within one year of the first violation.

(2) For purposes of this section, "short-term rental" means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.

(3) For purposes of this section, "residential dwelling" means a private structure that is designed and available, pursuant to applicable law, for use and occupancy by one or more individuals. "Residential dwelling" does not include a commercially operated hotel, motel, bed and breakfast inn, or a time-share property as defined by subdivision (aa) of Section 11212 of the Business and Professions Code.

(4) The fine limits set by this subdivision apply only to infractions that pose a threat to public health or safety. The fines described in this subdivision shall not apply to a first time offense of failure to register or pay a business license fee. Nothing in this subdivision limits the authority of a city, or city and county, to establish lower fines for specific violations by ordinance.

(e) A city levying a fine pursuant to paragraphs (2) and (3) of subdivisions (b) and (c), and paragraph (1) of subdivision (d), shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

(Amended by Stats. 2021, Ch. 307, Sec. 2. (SB 60) Effective September 24, 2021.)



**State of California**

**GOVERNMENT CODE**

**Section 51185**

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51185. (a) A violation of Section 51182 is an infraction punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(b) If a person is convicted of a second violation of Section 51182 within five years, that person shall be punished by a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500).

(c) If a person is convicted of a third violation of Section 51182 within five years, that person is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500).

(Added by Stats. 1992, Ch. 1188, Sec. 1. Effective January 1, 1993.)



**GOVERNMENT CODE - GOV**

**TITLE 5. LOCAL AGENCIES [50001 - 57607]** ( Title 5 added by Stats. 1949, Ch. 81. )

**DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]** ( Division 2 added by Stats. 1949, Ch. 81. )

**PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7]** ( Part 1 added by Stats. 1949, Ch. 81. )

**CHAPTER 1. General [53000 - 53170]** ( Chapter 1 added by Stats. 1949, Ch. 81. )

**ARTICLE 4. Miscellaneous [53060 - 53087.9]** ( Article 4 added by Stats. 1951, Ch. 522. )

**53069.4.** (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900.

(2) (A) The administrative procedures set forth by ordinance adopted by the local agency pursuant to this subdivision shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(B) Notwithstanding subparagraph (A), the ordinance adopted by the local agency pursuant to this subdivision may declare commercial cannabis activity undertaken without a license as required by Division 10 (commencing with Section 26000) of the Business and Professions Code to be a public nuisance and provide for the immediate imposition of administrative fines or penalties for the violation of local zoning restrictions or building, plumbing, electrical, or other similar structural, or health and safety requirements if the violation exists as a result of, or to facilitate, the unlicensed cultivation, manufacturing, processing, distribution, or retail sale of cannabis for which a license is required. This subparagraph shall not be construed to apply to cannabis cultivation or activity that is lawfully undertaken pursuant to Section 11362.1 or 11362.5 of the Health and Safety Code, to commercial cannabis activity undertaken pursuant to a license under Division 10 (commencing with Section 26000) of the Business and Professions Code and applicable state regulations, or to a person exempt from licensure pursuant to Section 26033 of the Business and Professions Code.

(C) If a local agency adopts an ordinance that provides for the immediate imposition of administrative fines or penalties as allowed in subparagraph (B), that ordinance may impose the administrative fines and penalties upon the property owner and upon each owner of the occupant business entity engaging in unlicensed commercial cannabis activity and may hold them jointly and severally liable for the administrative fines and penalties.

(D) Administrative fines or penalties that are immediately imposed pursuant to an ordinance adopted under subparagraph (B) shall not exceed one thousand dollars (\$1,000) per violation and shall not exceed ten thousand dollars (\$10,000) per day. This subparagraph shall not be construed to limit the immediate imposition of larger fines that are otherwise authorized by applicable law and shall not be construed to limit administrative fines or penalties that are imposed after notice and a reasonable time to correct pursuant to subparagraph (A).

(E) An ordinance adopted pursuant to subparagraph (B) shall provide for a reasonable period of time for the correction or remedy of the violation prior to the imposition of administrative fines or penalties as required in subparagraph (A) if all of the following are true:

(i) A tenant is in possession of the property that is the subject of the administrative action.

(ii) The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the commercial cannabis activity.

(iii) The rental property owner or agent did not know the tenant was engaging in unlicensed commercial cannabis activity for which a license was required and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the unlicensed commercial cannabis activity.

(F) A local agency that passes an ordinance pursuant to subparagraph (B) may refer cases involving unlicensed commercial cannabis activity to the Attorney General to undertake civil enforcement action pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of, or Section 26038 of, the Business and Professions Code or any other applicable law.

(b) (1) Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be as specified in Section 70615. The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the fee specified in Section 70615 regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

*(Amended by Stats. 2023, Ch. 477, Sec. 1. (AB 1684) Effective January 1, 2024.)*

## Chapter 1.28

### ADMINISTRATIVE CITATIONS

Sections:

- 1.28.010 Purpose and applicability.**
- 1.28.020 Enforcement officer--Defined--Authority.**
- 1.28.030 Administrative citation.**
- 1.28.040 Amount of fines.**
- 1.28.050 Payment of the fine.**
- 1.28.060 Hearing request.**
- 1.28.070 Advance deposit hardship waiver.**
- 1.28.080 Hearing officer.**
- 1.28.090 Hearing procedures.**
- 1.28.100 Hearing officer's decision.**
- 1.28.110 Late payment charges.**
- 1.28.120 Recovery of administrative citation fines and costs.**
- 1.28.130 Right to judicial review.**
- 1.28.140 Notices.**

#### **1.28.010 Purpose and applicability.**

- A. This chapter provides for administrative citations as provided in Government Code Section [53069.4](#).
- B. The remedies provided by this chapter are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of this code.
- C. Use of this chapter shall be at the sole discretion of the City. (Ord. 6710-NS § 2, 2002)

#### **1.28.020 Enforcement officer--Defined--Authority.**

- A. For purposes of this chapter, "enforcement officer" shall mean any City employee or agent of the City with the authority to enforce any provision of this code.

B. Enforcement officers shall have authority to issue administrative citations pursuant to this chapter. (Ord. 6710-NS § 2, 2002)

### **1.28.030 Administrative citation.**

A. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of that provision has occurred, the enforcement officer may issue an administrative citation to any person responsible for the violation.

B. Each administrative citation shall contain the following information:

1. The date of the violation;
2. The address or a definite description of the location where the violation occurred;
3. The section of this code violated and a description of the violation;
4. The amount of the fine for the code violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;
7. An order to correct the code violation described in the administrative citation if said violation is correctable as described in Section [1.20.030](#);
8. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained and an advance deposit waiver; and
9. The name and signature of the citing enforcement officer.

C. In addition to the administrative citation and penalty authorized by this chapter, an order to correct a violation under subdivision B.7 of this section may be enforced as set forth in the chapter applicable to that violation.

D.

1. In cases involving a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, a reasonable time not to exceed six months shall be provided to remedy or correct the violation prior to imposition of fines or penalties. In determining what is a reasonable time, the City may consider the estimate of local professionals including licensed contractors. In the case of such violations, the time within which the violation must be corrected in order to avoid a fine shall also be specified on the administrative citation.
2. In cases where a citation is based solely on a person's failure to have obtained a permit or license from the City other than for a regulated business activity, and the person has not previously been cited for the same violation, the citation shall specify a reasonable time to obtain the permit or license, and the penalty shall not exceed \$50.00 if the cited person shows proof of correction to the enforcing officer within the time established for obtaining the permit or license. This subdivision shall apply to violations of Title [23](#) only at the option of the enforcement officer. (Ord. 6836-NS § 1 (part), 2005; Ord. 6710-NS § 2, 2002)

#### **1.28.040 Amount of fines.**

- A. The amounts of the fines for code violations imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the City Council.
- B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within 36 months from the date of an administrative citation.
- C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date. (Ord. 6710-NS § 2, 2002)

#### **1.28.050 Payment of the fine.**

- A. The fine shall be paid to the City within 30 days from the date of the administrative citation.
- B. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation. (Ord. 6710-NS § 2, 2002)

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**1.28.060 Hearing request.**

A. Any recipient of an administrative citation may contest the existence of a violation of the code, that they are the responsible party or any order issued under Section [1.28.030.B](#) by completing a request for hearing form and returning it to the City within 21 days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section [1.28.070](#).

B. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

C. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing. (Ord. 6836-NS § 2 (part), 2005; Ord. 6710-NS § 2, 2002)

**1.28.070 Advance deposit hardship waiver.**

A. Any person who intends to request a hearing under Section [1.28.060](#) and who is financially unable to make the advance deposit of the fine as required in Section may file a request for an advance deposit hardship waiver.

B. The request shall be filed with the City on an advance deposit hardship waiver application form within ten days of the date of the administrative citation.

C. The requirement of depositing the full amount of the fine as described in Section [1.28.060.A](#) shall be stayed unless or until the City makes a determination not to grant the advance deposit hardship waiver.

D. The City may grant the advance deposit hardship waiver only if the cited party submits a sworn declaration, together with any supporting documents or materials, which demonstrates their financial inability to deposit with the City the full amount of the fine in advance of the hearing.

E. If the City determines not to issue an advance deposit hardship waiver, the cited party shall remit the deposit to the City within ten days of the date of that decision or 30 days from the date of the administrative citation, whichever is later.

F. The City shall issue a written determination of its reasons for granting or denying an advance deposit hardship waiver. This written determination shall be final.

G. The written determination shall be served upon the applicant for the advance deposit hardship waiver by first class mail. (Ord. 6710-NS § 2, 2002)

### **1.28.080 Hearing officer.**

The City Manager shall designate the hearing officer for administrative citation hearings. (Ord. 6710-NS § 2, 2002)

### **1.28.090 Hearing procedures.**

A. No hearing to contest an administrative citation before a hearing officer shall be held unless the fine has been deposited in advance in accordance with Section [1.28.060](#) or an advance deposit hardship waiver has been granted in accordance with Section [1.28.070](#).

B. A hearing before the hearing officer shall be set for a date that is not less than 15 days and not more than 30 days from the date that the request for hearing is filed in accordance with the provisions of this chapter.

C. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

D. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine, a failure to exhaust their administrative remedies and consent to any order issued pursuant to Section [1.28.030.B.6](#) and [B.7](#).

E. The administrative citation and any additional report submitted by the enforcement officer shall constitute *prima facie* evidence of the respective facts contained in those documents. If the party contesting the citation presents evidence to the contrary, the burden of proof shall shift to the enforcement officer.

F. The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision. (Ord. 6836-NS § 3 (part), 2005; Ord. 6710-NS § 2, 2002)

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**1.28.100 Hearing officer's decision.**

- A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold, reduce or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.
- B. If the hearing officer determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City.
- C. If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.
- D. If the hearing officer determines that the administrative citation should be canceled or reduced and the fine was deposited with the City, then the City shall promptly refund the amount of the deposited fine or the amount paid in excess of the reduced fine, together with interest at the average rate earned on the City's portfolio for the period of time that the fine or excess fine amount was held by the City.
- E. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.
- F. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount or number of administrative citation fines upheld by the hearing officer. (Ord. 6710-NS § 2, 2002)

**1.28.110 Late payment charges.**

Any person who fails to pay to the City any fine imposed pursuant to the provisions of this chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines, as well as interest at the legal rate. (Ord. 6710-NS § 2, 2002)

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**1.28.120 Recovery of administrative citation fines and costs.**

The City may collect any past due administrative citation fine or late payment charge by use of all available legal means, including, but not limited to, means available for the collection of judgments, liens and actions for recovery of money. The City also may recover its collection costs. (Ord. 6710-NS § 2, 2002)

**1.28.130 Right to judicial review.**

- A. Any person aggrieved by an administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing a petition seeking review in accordance with Government Code Section [53069.4](#).
- B. The City is prohibited from seeking review of an administrative decision of a hearing officer on an administrative citation pursuant to Government Code Section [53069.4](#).
- C. No administrative decision of a hearing officer on an administrative citation shall estop the City Council or any other board or commission or officer or employee of the City from exercising their independent authority and judgment in any other forum within or outside the City. (Ord. 7081-NS § 1, 2009; Ord. 6710-NS § 2, 2002)

**1.28.140 Notices.**

- A. Whenever a notice or report is required to be given or provided under this chapter, unless different provisions herein are otherwise specifically made, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at their last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in a U.S. mail box.
- B. Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

C. Proof of giving any notice may be made by the certificate of any officer or employee of the City, or by affidavit of any person over the age of 18 years, which shows service in conformity with this code or other provisions of law applicable to the subject matter concerned. (Ord. 6710-NS § 2, 2002)

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**The Berkeley Municipal Code is current through Ordinance 7957-NS, passed April 15, 2025.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by General Code.](#)





Eric Weaver &lt;ericmartinweaver@gmail.com&gt;

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## Citation Process

2 messages

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Winnacker, Dave <DWinnacker@berkeleyca.gov>

Thu, Sep 18, 2025 at 9:29 AM

To: Eric Weaver <ericmartinweaver@gmail.com>

Eric,

Following up our conversation following the workgroup meeting yesterday, I reviewed the internal Administrative Citation process. In relevant part:

**BEFORE ISSUING A CITATION--**

**GIVE THE VIOLATOR A CHANCE TO CORRECT THE VIOLATION**

Before issuing a citation, give the violator a reasonable chance to correct the violation-- remember, this may be the first time he or she has heard about it.

*Note: From here on out, everything should be in writing.*

**A. First Notice**

Send a "first notice and order to correct" to the violator. The purpose of this letter is to **politely**:

1. Notify the violator of the specific violation;
2. Explain how it must be corrected (*i.e.*, removal of brush, obtaining a building permit, getting a dog license, etc.);
3. Set a reasonable deadline for doing so.

**B. Penalties**

Maximum administrative penalties, well beyond those permitted for infractions, have been established by Council resolution. **However, until we have gained experience with administrative citations, penalties should be the same as for infractions:**

\$100 for the first violation

\$200 for the second violation

\$500 for the third and subsequent violations.

In the case of exceptional violations that have serious consequences, a higher penalty may be imposed. **You should consult with the City Attorney's office before imposing any penalty higher than \$500.00.**

Please let me know if this answers your questions. I am available for a call to discuss as needed.

Best,

Dave

510.684.3021

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**From:** Arnold, Colin  
**Sent:** Thursday, September 18, 2025 8:54 AM  
**To:** Winnacker, Dave <DWinnacker@berkeleyca.gov>  
**Subject:** Citations

Internal



Colin Arnold • Interim Assistant Fire Chief  
Wildland Urban Interface Division  
[carnold@berkeleyca.gov](mailto:carnold@berkeleyca.gov) • 510-981-5620

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**Eric Weaver** <ericmartinweaver@gmail.com>  
To: "Winnacker, Dave" <DWinnacker@berkeleyca.gov>

Thu, Sep 18, 2025 at 10:00 AM

Hi Dave. So this is great. But it needs to be made clear to the public. In my opinion at a minimum it should be in the information sheet the BFD is developing. In advance of the completion of the sheet we should try to think of another way to publish it.

Thanks for looking into this for me.

Eric

Eric Weaver  
ericmartinweaver@gmail.com  
[Quoted text hidden]



Colin Arnold • Interim Assistant Fire Chief  
Wildland Urban Interface Division  
[canold@berkeleyca.gov](mailto:canold@berkeleyca.gov) • 510-981-5620

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## Proposed Modifications of Berkeley Fire Code for WUI Appeals and Violations

### Section 111 Means of Appeal

111.5 This Section 111, Means of Appeal, shall not apply to appeals arising from Section [] Wildland Urban Interface Regulations. Appeals from Wildland Urban Interface notices or violations shall be in accordance with Section [] Enforcement and Appeals from Wildland Urban Interface Decisions.

### Section 112 Violations

112.5 This Section 112, Violations, shall not apply to enforcement arising from Section [] Wildland Urban Interface Regulations. Appeals from Wildland Urban Interface notices or violations shall be in accordance with Section [] Enforcement and Appeals from Wildland Urban Interface Decisions.

DRAFT

## SECTION 111 MEANS OF APPEALS

**Section 111.1 Board of appeals established. Appeals Procedure** ~~In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official. an appeal therefore may be taken to the City Council by the applicant or permit holder. Notice of the appeal must be filed with the City Clerk of the City of Berkeley within ten days from the date of mailing of the fire code official's decision to the applicant or permit holder. The notice of appeal shall contain a statement of the reasons for the appeal. The City Clerk shall forward one copy thereof to the fire code official. Within thirty days after the filing of the notice of appeal, the fire code official shall transmit to the City Council all their records pertaining to the decision appealed from.~~

**Section 111.1.1 Stay of Proceedings** ~~The filing of the notice of appeal shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until determination of the appeal as hereinafter provided, unless the fire code official determines that such a stay could result in an imminent threat to public safety.~~

**Section 111.3 Qualifications.** ~~The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protection systems, and are not employees of the jurisdiction.~~ **Decisions:** ~~The City Council shall review the action of the fire code official and shall do any one of the following:~~

- a. ~~Refer the matter back to the fire code official.~~
- b. ~~If the facts stated in or ascertainable from the application, the Notice of Appeal, the written statement of the fire code official setting forth the reason for their decision, and the other papers, if any, constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the fire code official. Such decision shall be final.~~
- c. ~~If, in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing by mailing a copy of such notice by certified mail to the address of the applicant as stated in the Notice of Appeal, at least ten (10) days before the time fixed for the hearing. The City Council may continue the hearing from time to time.~~
- d. ~~Following such hearing, the City Council shall reverse, affirm wholly or partly modify any decision of the fire code official, or make any other decisions or determinations or impose such conditions as the facts warrant. Such decision or determination shall be final.~~
- e. ~~If none of the above actions have been taken by the City Council within thirty (30) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal shall be deemed dismissed.~~

- f. If the appeal is set for hearing but the disposition of the appeal has not been determined within ninety (90) days from the date the appeal first appears on the City Council agenda, then the decision of the fire code official shall be deemed affirmed and the appeal deemed dismissed.

111.4 Administration. The fire code official shall take immediate action in accordance with the decision of the Board City Council .

## **SECTION 112 VIOLATIONS**

**Section 112.1 Unlawful acts [Amended subsection].** It shall be unlawful for a person, firm or corporation to erect, construct, alter, repair, remove, demolish or utilize a building, occupancy, premises or system regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code, or to create, maintain or allow to continue any fire hazard.

**Section 112.4 Violation penalties.** Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a ~~[SPECIFY OFFENSE], punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [NUMBER OF DAYS], or both such fine and imprisonment~~ misdemeanor, but may be cited or charged, at the election of the enforcing officer or City Attorney, as infractions, subject to an election by the defendant under Penal Code Subsection 17 (d). Each day that a violation continues after due notice has been served shall be deemed a separate offense. In addition to all other legal remedies, civil or criminal (as set forth above), any violation of this code constitutes a public nuisance in accordance with B.M.C Chapter 1.26, and is subject to all provisions of B.M.C. Chapter 1.26, as well as abatement under B.M.C. Chapter 1.24, "Abatement of Nuisances". All such violations are also subject to the issuance of an administrative citation in accordance with B.M.C Chapter 1.28 at the discretion of the enforcing officer or the City Attorney.

## **SECTION 114 UNSAFE STRUCTURES OR EQUIPMENT**

**Section 114.7 Summary abatement.** Where conditions exist that are deemed hazardous to life and property, the fire code official or fire department official in charge of the incident is authorized to abate summarily such hazardous conditions that are in violation of this code. Where the owner does not comply with an abatement order under Section 114.4 within the period specified, the City of Berkeley may perform or cause to be performed the necessary work. The costs incurred shall be recoverable under the procedures in Section 114.7.1.

**Section 114.7.1 Abatement process [Additional subsection]** The abatement process shall be conducted in accordance with the notice and hearing requirements of the nuisance abatement provisions of Berkeley Municipal code chapter 1.24, including summary abatements of structures or premises determined by the City of Berkeley to constitute an imminent hazard or emergency condition.

**Chapter 2 of the California Fire Code is adopted in its entirety subject to the modifications thereto which are set forth below.**

Draft Enforcement and Appeals re City of Berkeley Fire Code Chapter 49 – Requirements For Wildland-Urban Interface Fire Areas

This Chapter only applies to enforcement and appeals for Berkeley Fire Code Chapter 49 – Requirements For Wildland-Urban Interface Fire Areas

Section 1- Notice of Non-compliance.

- (a) A Notice of Non-Compliance is issued by the City notifying a Property Owner that the Property Owner's property is not in compliance with Chapter 49.
- (b) Prior to issuing a Notice of Non-Compliance, the City shall make reasonable efforts to review with the Property Owner the ways in which the property is not in compliance with Chapter 49. The purpose of enforcement is to encourage Property Owners to come into compliance with Chapter 49. To that extent, enforcement efforts should be informative and lenient, so as to gain compliance without the need for fines and other enforcement measures.
- (c) Service. A Notice of Non-Compliance may be served on the Property Owner by personal service or by mail, mailed to the Property Owner at the Property Owner's address set out in the Alameda County Assessor's records. A Notice served by mail shall add five days to any compliance period.
- (d) Time to Comply. A Property Owner shall comply with a Notice of Non-Compliance within the following time periods:
  - (1) 90 days to comply before notice of violation is issued.
  - (2) Exceptions. The following categories of Property Owners have 120 days to comply:
    - (A) Senior (65 or older);
    - (B) Low-to moderate income (120 percent of the area median income);
    - (C) Disabled (state definition of disability)
  - (3) Monetary exception. All work in excess of \$2,000 as estimated by a responsible professional is carried over to the next year, unless assistance is available to pay for work required in the Notice of Non-Compliance.
- (e) Time to complete work pursuant to Notice of Non-Compliance may be extended further or the length of the compliance period if the property owner shows reasonable, good faith in proceeding to comply with the work required by the notice.
- (f) The compliance period may also be extended for good cause. For example, the infirmity of the Property Owner, the unavailability of contractors or others to perform the work.

- (g) At any time in this process, the Property Owner may give the City permission to enter the property to cure the Non-Compliance. In which case, the City will invoice the Property Owner for the costs, and if not paid within 6 months, the City may place a lien on the property, which lien may include all costs of curing the Non-Compliance and the costs of placing the lien on the Property.

#### Section 2 Administrative Citation for violation.

- (a) A Notice of Violation notifies a Property Owner that a Notice of Compliance has not been fully complied with and that the Property Owner will be issued an Administrative Citation as a penalty for non-compliance.
- (b) Property Owner failing to comply with a Notice of Non-compliance within the time frames set forth in Section 1 is considered in violation of Chapter 49 and may be given an administrative citation of \$100 for a first violation and given 90 (or 120 if an exception applies) days to comply with the Notice of Violation.
- (c) A Property Owner who fails to comply with a first notice of violation after the time permitted may be given an administrative citation of \$250, and 90 (or 120 if an exception applies) additional days to comply with the work required in the notice of non-compliance.
- (d) A Property Owner who fails to comply with a second notice of violation after 60 days may be given an additional administrative citation of \$500 and given 90 (or 120 days if an exception applies) additional days to comply with the work required in the notice of non-compliance.
- (e) The time frames to complete work after a Notice of Violation is issued may be extended for good cause.
- (f) If a Property Owner who has been given three Notices of Violation for the same non-compliance and has failed to complete the work required by the Notice of Non-Compliance within the allowed time, the City may seek permission from the Property Owner or a warrant to enter the property to complete the work. If the warrant is granted, permitting the City to enter the property to complete the work, the Property Owner may be charged for the cost of the corrective work and the cost of obtaining the warrant.

#### Section 3. Appeal.

- (a) Board of Appeals. There shall be a Board of Appeal consisting of three members. One member shall be qualified as a Hearing Officer, one shall be qualified by experience and training to pass on the hazards of fire, and one shall be a resident of the City. None of the Board Members may be current or former employees or contractors of the City, except for the Hearing Officer, who may have been a former contractor of

the City as a Hearing Officer. The Hearing Officer shall serve as the presiding officer of the Board. The members of the Board shall be hired or appointed by the City Manager. The resident member shall serve without compensation.

- (b) A Property Owner may appeal a Notice of Compliance or a Notice of Violation to the Board of Appeals within 30 days after a Notice of Non-Compliance or a Notice of Violation is served. The Appeal document shall set out all grounds for Appeal ~~and~~ Any documents supporting the appeal shall be due within 30 days after filing the appeal, unless the time is extended by the Hearing Officer. ~~provide any supporting documents.~~
- (c) Basis for Appeal. A Property Owner may appeal a Notice on the following grounds:
  - (1) The intent of Chapter 49 or any rules applying or interpreting the Chapter have been incorrectly applied or interpreted,
  - (2) Chapter 49 does not apply to the property or circumstances of the Notice of Non-Compliance or Notice of Violation;
  - (3) An equally good or better form of construction for Chapter 49 is proposed;
  - (4) The facts of the Notice are in error,
  - (5) City denied an Alternate Means and Measures Request,
  - (6) Compliance with a Notice may cause substantial harm to the property or neighboring properties (such as mudslides)
  - (7) Such other good cause (such as incapacity or lack of financial resources to comply).
- (d) The Board shall not have the authority to waive requirements of Chapter 49 or to interpret the administration of this Chapter.
- (e) Stay. The filing of an Appeal stays any action on the Notice until the Appeal is decided by Board, except in the case of an immediate danger.
- (f) Final City Decision. The Board's decision is the final decision of the City.
- (g) Open hearing. All proceedings of the Board shall be publicly noticed and open to the public.
- (h) City support. The City Clerk shall provide support for the Board as the Board shall require. The City Attorney shall provide such legal support for the Board as the Board shall require.
- (i) City Review of Appeal. Prior to the Board hearing an Appeal, the City may review the Appeal and may address the issues raised in the Appeal and rescind or modify the Notice at issue. The City and the Property Owner may also engage in negotiations or mediation to seek to resolve the issues in the Notice informally.
- (j) City response. The City shall have 30 days to respond to an Appeal, unless extended by the Hearing Officer.

- (k) Property Owner Reply. The Hearing Officer may permit a Property Owner to reply to the City's appeal response, if good cause is shown, and set the time frame for the reply.
- (l) Extensions of Time. The Hearing Officer may grant such extensions of time for good cause that either the Property Owner or the City may seek.
- (m) The Board shall establish policies and procedures necessary to carry out its duties consistent with the provisions of this Chapter and applicable law. The procedures shall not require compliance with strict rules of evidence, and shall follow those rules commonly applicable to administrative hearings.
- (n) Decision. The Board may affirm, modify, or reverse a decision of the City with a majority vote.
- (o) Final Decision. The Board's decision is the final decision of the City.

### Section 3. Right of Judicial Review.

- (a) Any person aggrieved by an administrative decision of the Board may obtain review of the Board's decision by filing a petition seeking review in accordance with Government Code Section [53069.4](#).
- (b) The City is prohibited from seeking review of Board's decision pursuant to Government Code Section [53069.4](#).

### Section 4. Right to Request Review by the California Fire Marshall.

- (a) Whenever an Appeal implicates an application or interpretation of the California Fire Code, the Property Owner or the City may appeal the Board's decision to the California Fire Marshall pursuant to [state code citation].

## **BFD WUI Division Inspection and Compliance Process Statement**

The Berkeley Fire Department's Wildland Urban Interface (WUI) Division is committed to reducing hazardous vegetation and promoting home-hardening measures that protect lives, property, and our community from wildfire.

Our approach is based on compliance through education, with citations used only as a last resort. The division's goal is to achieve lasting risk reduction by helping residents understand what constitutes a hazard and how to address it safely and effectively.

During annual inspections, our staff emphasize outreach and education. Most residents in the Very High Fire Hazard Severity Zone are already aware of the risks and often need only clarification or guidance to achieve compliance.

While the Fire Code grants authority to issue citations, inspectors are directed to prioritize collaboration. They are empowered to identify the most significant hazards, work with residents to develop reasonable timelines for mitigation, and recognize legitimate challenges such as financial constraints, contractor availability, or environmental limitations.

When violations are issued, residents are provided a 60-day window for corrective action, followed by a reinspection. If hazards remain unaddressed, a service fee is applied for the reinspection, and a citation, typically \$100, may be issued 14 days later. Citations escalate only in rare cases of continued, willful noncompliance.

Ultimately, enforcement is reserved for situations where education and cooperation have failed. The division's philosophy is simple: help first, enforce when necessary; financial costs are best directed at the work to be done. By working in partnership with our community, we aim to create a safer, more resilient Berkeley.

# WUI VEGETATION CODE WORKGROUP

## REGULAR MEETING

NOVEMBER 19, 2025

9:00 AM

Cypress Room – 2180 Milvia St. 1<sup>st</sup> Floor

Fire Chief's Representative – Asst. Chief Colin Arnold

Assistant Chief David Winnacker  
Richard Illgen  
George Perez-Velez

Eric Weaver  
Margit Roos-Collins

### DRAFT MINUTES

## Preliminary Matters

**Call to Order: 9:00 AM**

### Present:

- Assistant Fire Chief, Colin Arnold
- Assistant Fire Chief, David Winnacker
- Eric Weaver
- Margit Roos-Collins
- George Perez-Velez
- Richard Illgen (via Teleconference)

### Approval of November 12 Minutes

Motion by Margit Roos-Collins, seconded by Eric Weaver, and approved by consensus.

### Public Comment on Non-Agenda Matters

Public Members: 2 comments

**AGENDA MATTERS** *All Regular agenda matters are for discussion and possible action.*

1. **Action:** Discussion and possible action on suggestions for the Resident Guide.

**Written Materials:** Draft List of Proposed Ideas with Context for the Resident Guide

**Discussion:** Agenda Item #1 was not discussed and will be continued to the next regular meeting. Members will continue developing the content for the Resident Guide.

**2. Action: Emerging evidence that informs both local climactic conditions and informs discussion on the presence of vegetation in zone 0.**

**Written Materials:** LA Report to BOF Zone Zero Committee  
Options for reducing house losses during wildfires without clearing trees and shrubs, P. Gibbons, et al  
Excerpts from Dr. Michael Gollner communication to City Council and 2025 Article  
Fire Retardant and Fire Resistant Plants Excerpts, Douglas Kent, MS, MLA  
Science Summary by Dr. Travis Longcore  
Succulent Flammability Demonstrative Examples, Debra Lee Baldwin  
Looking for evidence of significant added fire risk to homes from adjacent plants during an ember storm or ground fire.

**Discussion:** Members reviewed and discussed documents submitted by a group member. Chief Arnold requested that members provide any additional documents or evidence of emerging science related to local climactic conditions and vegetation in Zone 0. This item may be continued at the next meeting if additional materials are submitted; otherwise, the discussion will shift toward continued development of the Resident Guide. To minimize printing, all referenced documents will be placed in the public binder available at future meetings.

**3. Action: Code Comparison**

**Written Materials:** Clean Draft of the new language  
Clean Draft of the old language  
Link to the [Fire Pathways Risk Assessment](#)  
Link to the [Berkeley Fire Hazard Severity Zones & CALFIRE LRA Map Update](#)

**Discussion:** Agenda Item #3 was not addressed and will be carried forward to the next regular meeting for possible discussion.

**4. Action:** **Discussion regarding citations, penalties, and appeals process and reviewing differing perspectives on the enforcement approach (e.g., formal vs. informal).**

**Written Materials:** Memo and Documents Submitted to the City Attorney's Office by Group Member Richard Illgen  
BMC 1.28  
EMBER Enforcement, Page 3 (modified).  
Email regarding internal Administrative Citation Progress.  
Proposed Modifications of Berkeley Fire Code for WUI Appeals and Violations  
BFD WUI Division Inspection and Compliance Process Statement

**Discussion:** Agenda Item #4 was not addressed and will be carried forward to the next regular meeting for possible discussion.

**5. Action:** **Agenda topics submitted by a member for consideration and discussion:**

State Fire Regulations  
Excerpts from the Government Code on Fire Zones  
Soils and Geology  
Fire-resistant Vegetation  
Eucalyptus and Other Dangerous Trees  
Building Composition and Compliance  
Compliance Costs  
Review and Discussion of Submitted Reference Materials on Wildfire Preparedness and Zone 0 Regulations

**Written Materials:** **To reduce printing and paper use, all referenced documents will be available in a binder for public access at the meeting.**

Clean Draft of the new language  
Clean Draft of the old language  
State Fire Regulations  
Excerpts from the Government Code on Fire Zones  
Firewise: How To Prepare Your Home For Wildfires  
Elsevier, Landscape and Urban Planning article  
NFPA Preparing Homes for Wildfire  
Reducing the Vulnerability of Buildings to Wildfire  
Science Summary by Dr. Travis Longcore  
Brentwood HOA Comments on Proposed Zone 0 Regulations  
Zone 0 Won't Save Your Home from Wildfire

**Discussion:** Topics listed in agenda item #5 were not addressed and will be carried forward to the next regular meeting for possible discussion. A member requested that a new agenda item be added for the next meeting to discuss communications to Council, including identifying concerns and preparing related correspondence.

## WORK GROUP REPORTS

### Adjournment

The meeting was adjourned at 10:45 AM on a motion by George Perez-Velez, seconded by Eric Weaver, and approved by consensus.

A regular meeting is scheduled for Wednesday, November 26, 2025, at 3:00 PM.

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to the Wildland Urban Interface Division of the Berkeley Fire Department, [wildfire@berkeleyca.gov](mailto:wildfire@berkeleyca.gov) 510-981-5620. Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: E-mail addresses, names, addresses, and other contact information are not required but, if included in any communication to a City board, commission, or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission, or committee for further information. Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at Berkeley Fire Department located at 2100 Martin Luther King Jr. Way Berkeley, CA.*

#### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair-accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

~~~~~  
I hereby certify that the agenda for this regular/special meeting of the Berkeley City's Disaster and Fire Safety Commission was posted at the front of the Division of Training, 997 Cedar Street, as well as on the City's website, three days prior to the scheduled Commission meeting.

SECRETARY SIGNATURE

Colin Arnold