



Susan Wengraf  
Vice Mayor & Councilmember District 6

## **REVISED AGENDA MATERIAL**

**Meeting Date:** September 10, 2024

**Item Number:** 38

**Item Description:** Amending BMC 7.52.060 to include “Wildfire Hardening” in the Real Property Transfer Tax Exceptions

**Submitted by:** Vice Mayor Susan Wengraf

These revisions are as a result of review by Fire, Finance and Legal.



Susan Wengraf  
Vice Mayor & Councilmember District 6

CONSENT CALENDAR  
September 10, 2024

To: Honorable Mayor and Members of the City Council  
From: Vice Mayor Wengraf (Author)  
Subject: Amending BMC 7.52.060 to include “Wildfire Hardening” in the Real Property Transfer Tax Exceptions

RECOMMENDATION

Adopt the first reading of an Ordinance to amend Berkeley Municipal Code 7.52.060, Real Property Transfer Tax Exceptions, by adding Sub-section L, Wildfire Hardening, below Sub-section K, Seismic Upgrades.

FINANCIAL IMPLICATIONS

To be determined

CURRENT SITUATION AND ITS EFFECTS

The inherent wildfire risk Berkeley faces because of the natural topography and weather conditions is increasing due to climate change which is bringing more frequent and substantial draughts, and higher temperatures.

The City of Berkeley has and will continue to implement strategies that reduce the wildfire risk to our community, and should a wildfire occur, improve the emergency response. However, the City is able to address only part of the wildfire risk that the community faces as much of the risk within the City proper lies on private property in the form of structures that pre-date modern fire resistive building codes. While some of the retrofit work that must occur is inexpensive, much of it is expensive and requires professionals. Thus, there is a significant challenge to getting this work completed, even for motivated residents. There is a need to be nimble and adapt our legislation to incentivize the work we know has to get done, work that will help slow an advancing fire so firefighters can protect the community. This amendment will provide an opportunity and mechanism for the City to incentivize homeowners in making these improvements.

This risk can be reduced through “hardening” which is the process of increasing resistance to wildfire by replacing combustible materials with ignition resistant and/or non-combustible materials and other scientifically proven actions including:

- Reducing the home’s vulnerability to heat.
- Creating fire-resistant surfaces.

- Blocking any potential points of ingress for embers and other flammable material.

Retrofitting our homes against seismic damage and destruction has proven to be good policy; hardening against wildfire will be as well. Providing a refund of a portion of the transfer tax to harden against wildfire will incentivize owners and buyers to undertake these important upgrades and reduce our vulnerability to destruction and damage as a result of a wildfire.

Berkeley Municipal Code (BMC) Chapter 7.52 (Real Property Transfer Tax) Section .060 provides exceptions to payment of transfer tax, including to those who make seismic upgrades just before or after selling or buying their home. Up to one-third of the tax imposed by BMC 7.52 can be reduced, on a dollar-for-dollar basis, for all expenses incurred on or after October 17, 1989 to "seismically retrofit".

This item recommends a similar exception for wildfire hardening expenses by adding Sub-section L. The maximum rebate shall be one-third (1/3) of the tax paid for a transfer of real property. However, the total rebate for any combination of seismic retrofit and/or wildfire hardening. Multiple rebate applications may be submitted for a rebate of the tax paid, but the total rebate for all applications shall not exceed the maximum of one-third (1/3) of the tax paid per property, every ten years. This shall take effect on January 1, 2025.

Qualifying upgrades and wildfire hardening projects must be completed either up to one year prior to the transfer of real property or within one year after the transfer. If the work qualifying for a rebate is completed prior to the transfer of the real property, the seller and buyer must decide who may apply for and receive the rebate. Work must be performed pursuant to a plan prepared by the applicant and approved by the Building Official, Fire Marshall or their designee.

Some of the hardening upgrades will require a permit and inspection by the Building Department. Work that requires a permit and inspection, that is completed without one, will not be eligible for the transfer tax rebate. Property owners wishing to perform their own work may not include a charge for their time.

Wildfire hardening may include but is not limited to:

- Replace wood shake roof with a Class A fire rated roof
- Installation of non-combustible siding around deck perimeter
- Installation of ember and flame-resistant screen or rated vents to attic and crawlspace openings and under eaves.
- Block spaces between roof covering and sheathing with noncombustible materials (bird stops).
- Installation of noncombustible gutter covers on gutters to prevent the accumulation of leaves and debris in the gutter.

- Caulk and plug gaps greater than 1/8-inch around exposed rafters and blocking to prevent ember intrusion into the attic or other enclosed spaces.
- Installation of weather-stripping to gaps greater than 1/8-inch between garage doors and door frames to prevent ember intrusion - weather-stripping must be compliant with UL Standard 10C.9.
- Replace windows with multi-paned windows that have at least one pane of tempered glass.
- Replace siding or deck using compliant noncombustible, ignition-resistant materials.
- Installation of a minimum 6-inch metal flashing, applied vertically on the exterior of the wall at the deck-to-wall intersection to protect the combustible siding material.
- Replace wood mulch products within five feet of all structures with noncombustible products such as stone, concrete, or gravel.
- Replace wooden fences within five feet of structures with noncombustible or ignition resistant materials.

Wildfire hardening increases a home's resistance to heat, flames and embers, thereby reducing the chances of a home igniting. This also protects adjacent homes from igniting and causing a structure-to-structure fire spread through the community.

Adding Wildfire Hardening to Berkeley Municipal Code 7.52.060, Sub-section L, in addition to Seismic upgrades, supports Berkeley's Strategic Plan Goal to create a resilient, safe, connected and prepared city.

### BACKGROUND

Maintaining our housing stock is essential to the health and welfare of our city. The impacts from a wildfire are not just seen in the structures; it has devastating consequences on mental health, individual sense of security, and our financial stability as a community.

The Loma Prieta Earthquake took the Bay Area by surprise on October 17, 1989. According to the California Department of Conservation, that 6.9 magnitude earthquake killed 63 people, injured close to 4,000 and displaced over 12,000 people. Less than two years later, June 25, 1991, Berkeley City Council voted for an exception on transfer property taxes to help homeowners pay for seismically upgrading their homes, and BMC 7.52.060, Sub-section K was established. In the last 10 years, the Finance Department processed approximately 1,200 seismic upgrade rebates for a total of \$7.2M.

Since the seismic retrofit exception was included in BMC 7.52.060 in 1991 no expanded safety exceptions have been added. The City of Berkeley is in one of the highest wildfire risk areas in the state. We have a long history of catastrophic wildfire here in Berkeley.

Most notably, in 1923, when a wildfire destroyed more than 600 homes, leaving more than 1,000 residents homeless. In 1991, the Berkeley/Oakland Tunnel Fire was responsible for 25 deaths and destroyed more than 3,000 homes. In 2024 valuation, that conflagration cost 4 billion dollars. Now is the time to amend this policy, adapt our legislation and help residents harden their homes against wildfire.

Fire science studies are decisive. Wildfire hardening reduces the chances of a home catching fire. The Home Insurance industry has taken note and adopted the components of Chapter 7A and defensible space in their evaluations of risk during the underwriting process. IBHS, the Insurance Institute for Business & Home Safety, initiated the Wildfire Prepared Home program, which incentivizes homeowners to implement home hardening best practices based on scientifically proven Wildfire Defense Standards.

#### Attachments

- 1: Ordinance Amending Sections of 7.52.060 of the BMC – redlined
- 2: Ordinance Amending Sections of 7.52.060 of the BMC – clean copy

ORDINANCE NO. ##### -N.S.

AMENDING SECTIONS 7.52.060 OF THE BERKELEY MUNICIPAL CODE

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

Section 1. That Berkeley Municipal Code 7.52.060, Real Property Transfer Tax Exceptions, is amended to add Sub-section L. and read as follows:

**BMC 7.52.60 Sub-section L**

L. 1. Up to one-third of the tax imposed by this chapter shall be ~~reduced~~rebated, on a dollar for dollar basis, for all expenses incurred on or after January 1, 2025 to "wildfire harden" either any structure which is used exclusively for residential purposes, or any mixed-use structure which contains two or more dwelling units. Multiple rebate applications may be submitted for a partial rebate of the tax paid. However, the total rebate for any combination of seismic retrofit and/or wildfire hardening, but the total rebate for all applications shall not exceed the maximum of one-third (1/3) of the tax paid per property ~~per every ten years~~.

2. The term "wildfire harden" within the meaning of this chapter means any of the following:

(a) That work which is the process of increasing resistance to wildfire by replacing combustible materials with ignition resistant and/or non-combustible materials and other scientifically proven actions. -The work must be permanent and not vegetation management or gardening adaptations that need continued maintenance. Best practices recommended by CAL FIRE are listed in subsection L 2(b).

(b) Replace wood shake roof with a Class A fire rated roof; install non-combustible siding around deck perimeter; install ember and flame-resistant screen vents with 1/16 mesh metal in attic, under eaves and at the foundation; block any spaces between roof covering and sheathing with noncombustible materials (bird stops); install a noncombustible gutter cover on gutters to prevent the accumulation of leaves and debris in the gutter; caulk and plug gaps greater than 1/8-inch around exposed rafters and blocking to prevent ember intrusion into the attic or other enclosed spaces; install weather-stripping to gaps greater than 1/8-inch between garage doors and door frames to prevent ember intrusion - weather-stripping must be compliant with UL Standard 10C.9;

replace windows with multi-paned windows that have at least one pane of tempered glass; replace siding or deck using compliant noncombustible, ignition-resistant materials; install a minimum 6-inch metal flashing, applied vertically on the exterior of the wall at the deck-to-wall intersection to protect the combustible siding material; replace wood mulch products within five feet of all structures with noncombustible products such as dirt, stone, or gravel; replace wooden fences within five feet of structures with noncombustible or ignition resistant materials;

(c) Any other work found by the building official or Fire Marshall to substantially increase the capability of those structures, specified in subsection L.1, to withstand destruction or damage in the event of a wildfire;

~~3.(d)~~ Acceptable products and materials are those listed by the California State Fire Marshal or in a current report issued by an approved agency (accredited to ISO 17065) to meet one of the following test standards:

- Noncombustible – Made from material of which no part will ignite and burn when subjected to fire. Any material passing ASTM E136 is considered noncombustible.
- Ignition-resistant – A type of building material that resists ignition or sustained flaming combustion sufficiently to reduce losses from wildland-urban interface conflagrations under worst-case weather and fuel conditions with wildfire exposure of embers and small flames. Ignition-resistant building materials must comply with one of the following: • Extended ASTM E84 (UL 723) test or ASTM E2768 or non-combustible material.

~~4(f)~~ BMC 19.28.030 CBC Chapter 7A Material and Construction Methods for Exterior Wildfire Exposure provides additional guidance information.

~~35.~~ The work to wildfire harden as provided herein shall be completed either up to one-year prior to the transfer of property or as provided in subsection L.4.

~~46.~~ If the work to wildfire harden structures and property provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or their designee may refund such expenses not to exceed one-third of the tax imposed to the parties

to the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

75. From the date of the recordation of the transfer document, the applicant shall have one year to complete all wildfire hardening work and submit a wildfire hardening verification application to the Codes and Inspection Division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be credited-rebated to the applicant upon submission of a Home Hardening verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date. ~~All other monies remaining in escrow will be returned to the City of Berkeley upon written request by the Finance Department.~~

86. Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or their designee may grant such an extension only for good cause. The decision of the City Manager or their designee shall be entirely within their discretion and shall be final.

(a) "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the Home Hardening work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the Home Hardening work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the Home Hardening work.

(b) "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant.

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.

ORDINANCE NO. ##### -N.S.

AMENDING SECTIONS 7.52.060 OF THE BERKELEY MUNICIPAL CODE

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

Section 1. That Berkeley Municipal Code 7.52.060, Real Property Transfer Tax Exceptions, is amended to add Sub-section L. and read as follows:

**BMC 7.52.60 Sub-section L**

L. 1. Up to one-third of the tax imposed by this chapter shall be rebated, on a dollar for dollar basis, for all expenses incurred on or after January 1, 2025 to "wildfire harden" either any structure which is used exclusively for residential purposes, or any mixed-use structure which contains two or more dwelling units. Multiple rebate applications may be submitted for a partial rebate of the tax paid. However, the total rebate for any combination of seismic retrofit and/or wildfire hardening shall not exceed the maximum of one-third (1/3) of the tax paid per property.

2. The term "wildfire harden" within the meaning of this chapter means any of the following:

(a) That work which is the process of increasing resistance to wildfire by replacing combustible materials with ignition resistant and/or non-combustible materials and other scientifically proven actions. The work must be permanent and not vegetation management or gardening adaptations that need continued maintenance. Best practices recommended by CAL FIRE are listed in subsection L 2(b).

(b) Replace wood shake roof with a Class A fire rated roof; install non-combustible siding around deck perimeter; install ember and flame-resistant screen vents with 1/16 mesh metal in attic, under eaves and at the foundation; block any spaces between roof covering and sheathing with noncombustible materials (bird stops); install a noncombustible gutter cover on gutters to prevent the accumulation of leaves and debris in the gutter; caulk and plug gaps greater than 1/8-inch around exposed rafters and blocking to prevent ember intrusion into the attic or other enclosed spaces; install weather-stripping to gaps greater than 1/8-inch between garage doors and door frames to prevent ember intrusion - weather-stripping must be compliant with UL Standard 10C.9;

replace windows with multi-paned windows that have at least one pane of tempered glass; replace siding or deck using compliant noncombustible, ignition-resistant materials; install a minimum 6-inch metal flashing, applied vertically on the exterior of the wall at the deck-to-wall intersection to protect the combustible siding material; replace wood mulch products within five feet of all structures with noncombustible products such as dirt, stone, or gravel; replace wooden fences within five feet of structures with noncombustible or ignition resistant materials;

(c) Any other work found by the building official or Fire Marshall to substantially increase the capability of those structures, specified in subsection L.1, to withstand destruction or damage in the event of a wildfire;

3. Acceptable products and materials are those listed by the California State Fire Marshal or in a current report issued by an approved agency (accredited to ISO 17065) to meet one of the following test standards:

- Noncombustible – Made from material of which no part will ignite and burn when subjected to fire. Any material passing ASTM E136 is considered noncombustible.

- Ignition-resistant – A type of building material that resists ignition or sustained flaming combustion sufficiently to reduce losses from wildland-urban interface conflagrations under worst-case weather and fuel conditions with wildfire exposure of embers and small flames. Ignition-resistant building materials must comply with one of the following: • Extended ASTM E84 (UL 723) test or ASTM E2768 or non-combustible material.

4. BMC 19.28.030 CBC Chapter 7A Material and Construction Methods for Exterior Wildfire Exposure provides additional information.

5. The work to wildfire harden as provided herein shall be completed either up to one-year prior to the transfer of property or as provided in subsection L.4.

6. If the work to wildfire harden structures and property provided for herein is to be performed after the transfer of property which is subject to the tax imposed by this chapter, upon completion of such work and certification by the building official as to the amount of the expenses of such work the City Manager or their designee may refund such expenses not to exceed one-third of the tax imposed to the parties to

the sale in accordance with the terms of such sale. Any remaining tax shall be retained by the City.

7. From the date of the recordation of the transfer document, the applicant shall have one year to complete all wildfire hardening work and submit a wildfire hardening verification application to the Codes and Inspection Division of the City of Berkeley. If the work is not completed at the end of one year, that portion which has been completed may be rebated to the applicant upon submission of a Home Hardening verification application and substantiating documentation, as required by the codes and inspections division of the City of Berkeley, showing the dollar amount of work completed up to that date.

8. Within the one-year period established by paragraph 5, an applicant may request, and the City Manager may approve, an extension of up to one year. The City Manager or their designee may grant such an extension only for good cause. The decision of the City Manager or their designee shall be entirely within their discretion and shall be final.

(a) "Good cause" includes (i) the inability of the applicant, after a prompt and diligent search to find and retain the services of an architect, engineer, contractor or other service provider whose services are necessary for the Home Hardening work; (ii) unforeseen and unforeseeable circumstances such as a significant change in the scope of the Home Hardening work due to circumstances in the field which could not reasonably have been known earlier; and (iii) serious illness or other extraordinary and unforeseeable circumstances that prevented the timely commencement or completion of the Home Hardening work.

(b) "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the seismic retrofit rebate provided in this chapter or state or local laws relating to the standards with which seismic retrofit work must comply; or (ii) any delays which were within the control or responsibility of the applicant.

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