



CONSENT CALENDAR
September 11, 2025

To: Honorable Mayor and Members of the City Council
From: Disaster and Fire Safety Commission
Submitted by: Greg Murphy, Chairperson
Subject: Remove pre-transfer eligibility restriction of the transfer tax rebate for wildfire hardening

RECOMMENDATION

Remove the 1-year pre-transfer eligibility restriction of the transfer tax rebate for wildfire hardening from BMC 7.52.060, to encourage early mitigation efforts.

FISCAL IMPACTS OF RECOMMENDATION

Increased utilization of the transfer tax exemption. Reduced risk of significant costs due to wildfire disaster.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has responded to wildfire risk with a variety of mitigation measures to improve prevention. One type of mitigation measure to reduce risk is through home “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.

On September 10, 2024, the council approved the first reading of the Ordinance amending BMC 7.52.060 to include “Wildfire Hardening” in the Real Property Transfer Tax Exceptions. While this encourages homeowners to implement wildfire hardening at the time of sale, the limitation of eligibility to projects undertaken within a year prior to the time of transfer discourages early action, and, to the extent that such measures could be required within Fire Zone 4 as part of EMBER or a future program, dampens the ability to require the recommended measures without imposing hardship. It appears that this was an unintended consequence of the original action.

Therefore, the Commission recommends that the City Council amend Berkeley Municipal Code 7.50.060.L.3 to strike the words “up to one-year” from the current ordinance. The Commission notes that the existing rebate program for seismic upgrades does not have a one year restriction prior to sale. While the point of sale is often an important opportunity for home renovations, the recent adoption of this ordinance with a one year prior to sale restriction could have the unintended consequence of discouraging homeowners from making wildfire hardening improvements early. Project delivery and property transfer dates are also subject to delay, which contributes to uncertainty, thereby discouraging action without this correction. Possible concerns to address permanence and verification should be studied over the next few years to integrate appropriate documentation filing requirements and/or re-inspection.

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.

Approve the recommended changes and amendments as spelled out in the Update on the Commission Recommendation on Transfer Tax Rebate for Home Hardening.

Motion to approve:	Katz
Second:	Darling
Vote:	Ayes: Katz, Wilson, Darling, Kinosian, Murphy, Herzer-Baptiste, Gordon
Nayes:	None
Abstain:	Dean
Absent:	Bradstreet

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 improve and adapt policies, and help residents harden their homes against wildfire. Fire science studies are decisive. Wildfire hardening reduces the chances of a home catching fire.

ALTERNATIVE ACTIONS CONSIDERED

- The Commission previously evaluated requiring that some investment to harden against wildfire while making major renovations and / or additions to the property will comply owners to undertake these important upgrades and reduce our vulnerability to destruction and damage as a result of a wildfire. This approach was found to be difficult for the Building Department to implement in a broader area, indicating that incentive approaches are important until staff can develop more experience after implementation of these aspects of the EMBER program within Fire Zone 4.
- The Commission considered recommending that pre-transfer rebate value be indexed to inflation, so homeowners not planning to transfer property ownership in the near term retain the real value of the incentive. The Commission did not recommend this feature at this time based on the Council declining to adopt a similar, although higher inflation adjustment for the rebate of home energy efficiency deposits. This feature could be considered in the future after further review.

CITY MANAGER

The City Manager acknowledges and agrees with some of the Commission's recommendations; however, the City's position differs in several key respects which are

Remove pre-transfer eligibility restriction of the transfer tax rebate for wildfire hardening
CALENDAR

outlined in the companion report submitted by the City. While both approaches seek to incentivize home hardening through the transfer tax rebate, the City's proposal narrows eligible measures given the City's fiscal situation.

CONTACT PERSON

Keith May, Commission Secretary, Deputy Fire Chief, (510) 510-981-5508

Attachments:

1: Ordinance Amending Sections of 7.52.060 of the BMC

Commission Response to issues raised at July 20, 2025 Committee meeting:

1. Cost Estimates and Administration

Cost estimates were directed to Staff. The Commission recommends that if cost considerations require, that the Council may consider limiting eligibility to Very-High Fire Hazard Severity Zones, to focus the incentive on parcels with regulatory burden and the greatest public safety benefit. (See L.1)

The Commission also notes that the existing Home Hardening TTR has not yet been implemented yet with an Application, and the responsible departments/divisions must also be updated within the Ordinance. (See L.5)

2. Scope of TTR Compared to EMBER

The TTR expansion for wildfire hardening was enacted before the EMBER program, and was initially designed with a scope that was focused on home hardening. The Council committee requested additional review of the scope of potential overlap with EMBER.

The Commission recommends that the City maintain eligibility for vegetation removal activities in the TTR program, provided that they demonstrated to be permanent, as required by BMC 7.52.60.L.2(a). However, a new comma could be helpful for interpretation and clarity. (See L.2) In addition, the Commission recommends limiting eligibility within the Zone Zero five foot area around the structure to align with the EMBER priority of protecting ignition within Zone Zero. (See L.2(c))

While the workgroup identifies meaningful concerns with high risk vegetation outside of Zone Zero, the TTR rebate should be focused on home hardening. The EMBER ordinance requires nearly all vegetation with limited exceptions to be removed from Zone Zero, so the TTR program should provide appropriate incentive and relief. The TTR should continue to provide incentives that extend beyond EMBER, such as non-combustible fences, double-paned windows, and partial costs of roof replacement or home siding with fire-resistant materials.

3. Ensuring that Hardening Measures are in Service at Time of Transfer

Given the possibility that there could be considerable time between the home hardening activity and the time of transfer, the Council requested review of this concern to ensure hardening measures remain in service at the time of transfer.

Fire Department Staff advised that for building and construction measures (fence removal/replacement, window glass replacement, home siding, gutter/attic vents), that there is minimal to no risk of non-permanence or reversal of the hardening work. The

evidence of payment to a contractor is strong likelihood of long-term service. Therefore, this does not merit a provision for verifying the measure is still in service at the time of transfer for this scope of measures, but a contemporaneous recording of expenses may be reasonable to prevent the risk of fraud.

However, there is more uncertainty for vegetation removal, especially when some species can resurface if not properly removed, and some species can require a follow-up treatment. The Commission recommends that the Application require self-certification that the hardening measures remain in service for all measures, and that Applications requesting rebate including any vegetation removal attach photographic documentation of conditions at the time of transfer if the transfer occurs five or more years after the date of removal. (See L.4(b)-(c))

4. Indexing

The Commission initially deferred formal recommendation of indexing the TTR of pre-transfer rebates to inflation to maintain a streamlined review and approval process. At this time that the Council is reviewing matters in greater depth, the Commission recommends an inflation adjustment to maintain the real value of the incentive.

This will enable greater certainty of recovering the real value when the household does not anticipate their date of transfer, and may be particularly important for property owners relying on third-party financing. Including indexing facilitates the urgency of action for community safety; the current program incents deferral of wildfire hardening benefits until an uncertain date in the future. (See L.1)

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, Sub-section L, is amended to 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. *When an application is submitted more than two years after the Home Hardening work is completed, the basis value of the rebate for all expenses incurred shall be adjusted based on changes in the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-Hayward, CA Metropolitan Statistical Area, as published by the Bureau of Labor Statistics. To be eligible for a rebate, the parcel must be located in a Very-High Fire Hazard Severity Zone, as defined by BMC 19.48.020.FFF.*

2. The term "wildfire harden" within the meaning of this chapter means 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 require continued maintenance. To be eligible for a rebate, the parcel level mitigations set forth in the California Department of Insurance "Safer from Wildfires" Framework REG-2020-00015 adopting California Code of Regulations Title 10, Chapter 5, Subchapter 4.8, Article 4, Section 2644.9 must be satisfactorily completed as determined by the Building Official (when a permit is required) and a Berkeley Fire Department Defensible Space Inspection. These include:

(a) All improvements must be permanent and comply with design, material and construction methods as described in the California Building Code, Chapter 7A. and BMC 19.28.030.

(b) Structures with a wood shake roof must be replaced with a Class A fire rated roof before qualifying for the transfer tax rebate.

(c) Clearing combustible materials including fences and gates *where they are, and all movable combustible objects, from the area* within five (5) feet of the building being evaluated, *provided that all movable combustible objects are (Replaced with only noncombustible materials.)*

(d) At least six (6) inches of noncombustible vertical clearance at the bottom of the exterior surface of the building, measured from the ground up.

(e) Fire-Resistant Vents and Gutter Covers of 1/16 to 1/8 inch noncombustible, corrosion-resistant metal mesh or OSFM Category 8165 approved ember resistant vents.

(f) Multi-paned windows, including dual pane windows, or functional shutters, which when closed, cover the entire window and do not have openings. (g) Enclosed eaves.

(h) Remove combustible materials and debris from under decks and installation of non-combustible siding or ember resistant mesh of 1/8" or finer around deck perimeter.

(i) Removal or absence of combustible structures, including sheds and other outbuildings, from the area within thirty (30) feet of the building being evaluated or, in the event that the applicant does not control the entirety of the area extending thirty feet from the building being evaluated, removal of combustible structures from as much of such area as is under the control of the applicant.

(j) Block spaces between roof covering and sheathing with noncombustible materials (bird stops).

(k) The property upon which the building being evaluated is situated complies with Section 4291 of the Public Resources Code, when applicable, and any applicable local ordinances, governing defensible space.

(l) Any other work found by the Building Official or Fire Marshal (or their designee) 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. 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.5.

4. (a) 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.

(b) The City Manager or their designee may require that a rebate application require self-certification that the hardening measures remain in service for all measures, and that Applications requesting rebate including any vegetation removal attach photographic documentation of conditions at the time of transfer if the transfer occurs five or more years after the date of removal.

(c) The City Manager or their designee may require that an application for rebate for Home Hardening work that occurred more than one year prior to transfer be preceded by the Applicant's certification filed with the City documenting any eligible expenses no later than one year after the Home Hardening work is completed.

5. 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 as a rebate 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.

6. 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 Wildfire 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 Wildfire Hardening work.

(b) "Good cause" does not include (i) ignorance of the applicable City ordinances or regulations concerning the Wildfire Hardening rebate provided in this chapter or state or local laws relating to the standards with which wildfire hardening 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.

