



BUILDING INDUSTRY OF SOUTHERN CALIFORNIA, INC. ORANGE COUNTY CHAPTER

October 19, 2022

Ms. Lori Smith
Assistant Fire Chief
Orange County Fire Authority
1 Fire Authority Road
Irvine, CA 92606

Re: Proposed Revisions of Orange County Fire Authority, B-01 & C-05
Guidelines

Dear Assistant Chief Smith,

On behalf of the Building Industry Association of Southern California, Orange County Chapter (BIAOC), I write to express concerns with the Orange County Fire Authority's (OCFA) proposed edits to municipalities' Fire Code and OCFA Guidelines.

I. INTRODUCTION

The mission of BIAOC is to champion housing as the foundation of vibrant and sustainable communities. We value our relationship with OCFA and the municipalities which work together to plan and protect fire-safe communities. We support OCFA's efforts to trim down the volume of its "Guidelines," but have concerns regarding the practical effect of the proposed changes and their implementation, especially in the face of what seems to be an enormous wave of regulation coming from the State government.

II. THE CHANGING REGULATORY LANDSCAPE

In short, the landscape of regulatory oversight for fire protection is changing in a material fashion in several respects:

1. **SRA Being Expanded.** The State has draft amendments to the State Responsibility Area maps, and we are informed the State will not share them with the affected communities prior to adoption.
2. **LRA Being Expanded.** We are informed the State is completing the Local Responsibility Area mapping *without regard to the input of our cities*. This potential expansion is coming *after code adoption*, and those maps are likely to extend the reach of the State further into local jurisdictions.

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3. **Cities Have Lost Local Control.** Chapter 47, “*Requirements for Wildland-Urban Interface Fire Areas*,” has been amended to become much more prescriptive and restrictive for the County and Cities such that *discretionary, local control of many fire planning and prevention elements has been eliminated*.
4. **OCFA is Trying to Codify its “Guidelines.”** The OCFA is trying to codify its “Guidelines”¹ by referencing and adopting them in whole within the proposed Code changes. As you know, OCFA changes the Guidelines regularly, without notice as prescribed by the Administrative Procedures Act.
5. **Attorney General Creating New Regulations Eroding Municipalities’ Discretion.** The State Attorney General announced his intention to separately challenge municipalities’ authority to approve of projects through the California Environmental Quality Act.²

I. OCFA’S PARTNERSHIP WITH MUNICIPALITIES

Against this background, we believe OCFA should reconsider its role as to how it serves as a partner to the Cities and County. Specifically:

1. **Help, Not Hinder the Municipalities.** The OCFA should primarily assist the Cities and County in complying with State law rather than having the municipalities “answer to OCFA” as another regulatory body.
2. **Reserve Discretion for the Building Official.** The OCFA should intentionally reserve for, and not intrude upon, the discretion of the building official on all elements of planning and development which are not prescribed by State law.

II. SUGGESTIONS TO FOSTER A FUTURE PARTNERSHIP

To facilitate this dynamic between the BIAOC, OCFA and the communities it serves, we suggest some programmatic changes and some specific changes to the Codes and OCFA Guidelines:

¹ We believe, the Guidelines were only provided to the affected communities on or around October 5, 2022 and the impact thereof is still being determined by stakeholders.

² The recent press release from the Attorney General (<https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-guidance-local-governments-mitigate-wildfire-risk>) suggests that “Wildfires have...killed nearly 150 people in California” since 2010. While this tragic fact may be true, it highlights the difference between northern California dynamics (fuel and topography driven fires) and Orange County (wind driven, flashy fuel fires). The largest Orange County fires from 2006 to the present (including the Sierra Peak, 241, Santiago, Freeway Complex, Silverado, Canyon 1, Canyon 2, Cristianitos, Aliso, Holy, Silverado, Blue Ridge, Bond and Coastal fires) have caused zero fatalities, and have proven that *our fuel modification plans and the hardening of homes (built after 2010) are very effective*.

1. The County of Orange and all cities served by OCFA should be made aware of what discretionary elements of the Code may be retained by the Building Official rather than just being required to surrender authority to the OCFA.
2. The OCFA should provide the Cities and County complete discretion in all areas not required by State Law (outside of the LRA Very High Fire Hazard Severity Zone and State Responsibility Areas). For example, the landscaping of projects clearly within the municipalities' jurisdiction should not be the domain of OCFA.
3. The subdivision mapping function (Subdivision Map Act) is exclusively the domain of the municipalities. OCFA should allow the Cities and County to comply with the Subdivision Map Act without requiring the municipalities to obtain OCFA's approval of the tentative or final subdivision maps. Further, once a city has approved a tentative tract map (which includes OCFA review), OCFA should not require the City to change the map later in subsequent reviews.
4. The OCFA should consolidate its reviews and not have several different plan checks that conflict with prior approvals. Currently, OCFA requires several independent reviews (i.e., PR110 Tentative Map, PR100 Advanced Planning, PR105 Development Review, PR 120 Fuel Modification, PR 145 Fire Master Plan) for even the most straightforward project, and all OCFA approvals should happen in one or at most, two, plan review processes.
5. OCFA should adopt clear State law checklists that the development community and municipalities can understand to eliminate the variability of outcomes and the current review process that requires "negotiation" with different plan checkers.
6. Specifically, in the proposed Fire Code:
 - a. Section 112.4, Violation Penalties, has ceded violation determinations to OCFA without any due process or right to defend.
 - b. Section 304.1.2, Vegetation, suggests that OCFA is taking authority for fuel modification in all areas subject to Chapter 49, not just those subject to the State mapping of the fire hazard zones.
 - c. Section 307.6.1 Gas Fueled Devices should recognize that most R occupancies do not have 10 feet of separation for barbecues, fireplaces, and fire pits, especially in areas not within the VHFHSZ or SRA.
 - d. Section 307.6.2 Devices using wood or fuels other than natural gas or liquified petroleum gas should recognize that almost no projects have 25 feet of separation for portable BBQ's, smokers, or movable fire rings, especially in areas that are not within the VHFHSZ or SRA.
 - e. Section 307.6.2.1, Prohibited Burning of wood or other fuels, should be amended to locations only required by State law.

- f. Section 324, Fuel Modification Requirements for New Construction, now seems to expand compliance with Guideline C05 in all areas of the County where vegetation may exist regardless of the State law requirements.
- g. Section 501.1 Scope of authority suggests that the Fire Official can require compliance with Guideline B-01 for Fire Master Plans in all areas. This decision should be left to Building Officials.
- h. Section 49.03.3 Requirements for Wildland-Urban Interface Fire Areas: Fuel Modification Plans, suggests that OCFA, not the Cities or County, has the authority to require fuel mod plans for all areas in a “wildfire risk area” rather than in areas required only by State Law. The extension of OCFA’s authority in this regard should be on a case-by-case discussion with the municipalities and the development community, when warranted.

Additionally, we are puzzled by why OCFA is suggesting the Guidelines become codified. It raises several administrative and legal issues and further erodes the municipalities’ ability to plan and develop properties within their jurisdiction. Attached as Exhibit A to this letter are additional comments and questions pointing out some of the concerning elements of the Guidelines.

III. CONCLUSION

As the State continues to insert itself in local land use decisions, the development community needs to work with local governments, cities, and agencies to collectively achieve the exacting standards and societal benefits our communities deserve. In the interest of maintaining local control, creating safe communities, and collaboratively working (at the local level), BIAOC respectfully submits the comments mentioned above for consideration. Thank you for your consideration as you review this letter, and we look forward to further discussing the matter at your convenience.

Sincerely,



Adam Wood
Vice President
BIASC – Orange County Chapter

cc: BIAOC Executive Committee
Orange County Building Officials

ATTACHMENT A: OCFA GUIDELINES REVIEW

We have several questions about the Guidelines, which have been changed and, in some cases, removed the authority of Cities to plan their projects. Given the new prescriptive nature of the State law, the Building Official, not OCFA, should be charged with discretion in many circumstances. It is unclear which of these changes, if any, are required by State Law, but we would appreciate your consideration of the following:

Guideline C-05 Vegetation Management Guideline: Technical Design for New Construction Fuel Modification Plans and Maintenance Program:

1. P 3. The Scope refers to “wildfire-risk areas or such areas as designated by the fire code official,” seemingly undefined. It seems these should apply in the VHFHSZ or the SRA only and not expand OCFA jurisdiction in City areas that are not subject to these increased standards.
2. P. 3. The 30-foot setback from the property line should include the exceptions identified in the State Code.
3. P. 4, Note 1: Is a city or an applicant precluded from using alternative means and methods (AMM) for building foundations? Does State law require this? As you know, part of the A zone is newly required to be very restrictive according to State Law, and flexibility should be encouraged where appropriate.
4. P. 6, Note 2: Is OCFA proposing a 50-foot Roadside Protection Zone or mandating a minimum 10’ Roadside Protection Zone in all areas?
5. P. 15, Attachment 1, Note 2: The City, not OCFA, should be the judge of when a Certificate of Occupancy may be issued. Indeed, issuing a Certificate of Occupancy should be allowed before “plant establishment.”

Guideline B-01 Fire Master Plans for Commercial and Residential Development:

1. P. 4, Note 2.2. Most cities are in a position where they have no choice but to approve ADUs and other accessory structures. Requiring the hose pull to extend around every accessory structure, patio cover, pool equipment, and casitas is not reasonable. It should not be imposed upon the City or applicant if not required by State Law.
2. P. 5, Bullet 2. When a building immediately abuts a fire access roadway, laddering areas should not be required on “at least two sides” of the structure.
3. P. 5. 2.3.1 The OCFA should work with municipalities and the development community to accommodate laddering for 2-3 story buildings without demanding the entire roadway be “no closer than 10-30 from the building.” Driveways, entryways, and entry areas should be allowed flexibility for safety planning.

4. P. 5, note 2.3.1.1. The Building Official, not the Fire Code official, should be allowed to determine the adequacy of access for this and other elements.
5. P. 5, 2.3.2. Outside the fire access way, staging area configuration cannot be accommodated in many infill areas. This would apply to all dead-end areas, even if under 150 feet, and may require a 45' width. The Building Official, not the Fire Code official, should be allowed to determine the adequacy of access for this and other elements.
6. P. 5. Note 2.7. The cross slope of the fire lanes should be allowed to exceed 2% where necessary.
7. P. 8. Note 2.12. Why does the OCFA require the Cities and applicants to design "fire lane criteria" where they are not necessary? This seems to eliminate much city planning discretion for infill projects (e.g., alleyway projects). Building Official, not the Fire Code official, should be allowed to determine the adequacy of access for this and other elements.
8. P. 28. The "Wildfire Risk Area," defined by OCFA, is beyond the definition required by State Law. Allowing OCFA to extend its jurisdiction to areas that are "covered with vegetation" or "would result in a great or unusual damage through fire" is subjective and dependent upon the individual plan checker selected. The guidelines should apply only to the areas as required by State Law.
9. P. 29. Attachment 6. Title 21, Div. 2, Chapter 7, section 1411.7 for "Fire Trucks" requires that fire trucks shall not exceed the following weight limits: Single steering axle, 24,000 pounds; Tandem axel, 48,000 pounds; Tridem axles, 54,000 pounds. Nonetheless, OCFA proposes that the municipalities require roads built to accommodate 94,000 pounds. It is unclear why this substantial infrastructure requirement is proposed.



ORANGE COUNTY FIRE AUTHORITY

P. O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Road, Irvine, CA 92602-0125

Brian Fennessy Fire Chief

(714) 573-6000

www.ocfa.org

October 24, 2022

Mr. Adam Wood
Vice President
BIAOC – Orange County Chapter
17192 Murphy Ave. #14445
Irvine, Ca 92623

Re: Response to Proposed Revisions of the OCFA, B-01 & C-05 Guidelines Letter

Dear Mr. Wood,

I am in receipt of your letter dated October 19, 2023, regarding Proposed Revisions of the OCFA, B-01 & C-05 Guidelines. I am responding to your letter to provide clarification on several issues raised in the letter.

Since many of your comments and my responses crossover and blend in differing areas of the letter I have tried to capture the main themes. I look forward to a future meeting to drill down into the specifics.

My team has reviewed the letter and concur that the BIAOC is addressing four areas of concern. I will address each as concisely as possible:

1. Concerns about the changing regulatory landscape from the State causing continued loss of control at the local level, including commentary issued by the Attorney General.
2. Concerns about the Planning and Development processes at OCFA.
3. Specific concerns about proposed California Fire Code amendments to include amendments that point to OCFA Guidelines B-01 and C-05.
4. Specific concerns about the language proposed in Guideline B-01 – Fire Master Plans for Commercial and Residential Development and Guideline C-05 – Vegetation Management: Technical Design for New Construction Fuel Modification Plans and Maintenance Program.

Item #1 We share your concerns about the rapidly changing regulatory landscape. That said my team has tracked eleven legislative bills over the past five years; and we only focused on those that had the potential to effect code adoption as well as new regulations that identify us as Authority Having Jurisdiction. It is true through the State adoption of the California Fire Code (CFC) that there is a significant rewrite of Chapter 49 – *Requirements for Wildland-Urban Interface Fire Areas*. This has the potential to be more restrictive in building construction, vegetation management and subdivision review surveys. Most of the content in CFC Chapter 49 and Guideline C-05 are direct legislative actions. It is important to note that

the OCFA works under not only the California Fire Code but numerous mandates in the California Code of Regulations including the Government, Health and Safety, Public Resource and Civil codes. Our partner city and county agencies depend on us to understand and carry out the various codes and mandates as they pertain to fire life safety issues.

I have reviewed the Attorney General Ron Bonta's, *Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act*. Local city and county Planning and Development and land developers have reason for concern as this sets the stage for continued efforts to curb development in the Wildland Urban Interface.

The OCFA has little control over the results of State legislative actions. We do however have control over how we work with our partner agencies and development stakeholders to achieve the best outcomes within the parameters of code and alternate means and methods.

This is a good segue to Item #2, your concerns about our Planning and Development processes. Our relationship with your team has always been a healthy one. We have successfully worked through code adoptions and fee studies. While we may agree to disagree at times, this agency has developed internal programs that benefit the housing industry that include guaranteed sprinkler inspections next day and deferring our photovoltaic plan reviews and inspections to our partner building officials to expedite the process for new housing.

Thirteen of our partner cities and the county have some level of severity zone maps (VHSZ) recommended by CALFIRE and the Board of Forestry. In addition to the boundaries of those maps there are Wildland Risk Areas as defined in the CFC (see definition below) throughout the county. This code section is adopted by the State therefore by local. Prior to the Very High Severity Zone map creation (2007) the OC fire service used this definition to gauge next steps in fire life safety requirements. The 2007 CALFIRE VHSZ maps are not perfect and do not adequately define high or low risk areas. OCFA has maintained that some areas were left out and other should have not been included. We are hopeful that the upcoming maps will assist us with better definition and application of code. That said, it is never the intent of the OCFA to remove discretionary actions by our cities. It is our intent to protect buildings from exposure in the wildland interface.

Wildland Risk Area – Land is covered with grass, grain, brush or forest, whether private or publicly owned, which is so situated or is in such inaccessible location that a fire originating upon it would present an abnormally difficult job of suppression or would result in great damage through fire or such areas designated by the fire code official.

We respect that subdivision mapping is a city/county function. We are a participating partner as the jurisdiction's fire department, not an outside entity requesting review. The Subdivision Map Act does allow for us as part of the "city team" to request a viewing of tentative tract maps to ensure that the subdivision design includes Fuel Modification (if required) and can provide adequate ingress/egress for emergency response. We continually work with our partners to be way in front of each project to alleviate any conflicts.

To not belabor the readers time, I will leave the final planning and development topics that relate to internal OCFA processes for a future meeting with you.

To address your concerns about the “adoption” of Guidelines B-01 and C-05, please view the two amendments in Chapter 5 and Chapter 49 that point to these two guidelines. Our purpose for pointing to them in an amendment is for two reasons: full transparency of the requirements for fire access and water as well as fuel modification zones respectively. We are committing to these requirements for the three year duration of the code cycle sans any State regulations that supersede them. It is not nefarious in any way. All guidelines are subject to consideration of alternative means and methods just like all code sections. If legislation causes a significant addition or deletion, we will notify all stakeholders.

Concerning the CFC amendment comment for Chapter 1 Section 112.4 Violation Penalties; each jurisdiction has to make a decision about how they handle unabated violations. For the OCFA we have chosen a gentler approach of assessing penalty fees rather than a citation program that requires a filing in court. It is an effective tool that we rarely have to impose. The CFC has provisions for an appeal process.

Chapter 3 amendment comments concerning BBQ’s and pits are misguided.

The amendments for firepits/rings/places at R occupancies were created at the request of our Building Officials to provide guidance for approvals for installation of these devices in backyards as well as for their code enforcement personnel to address complaints. These requirements do not apply to BBQs, grills, smokers, and other devices used for cooking as expressly exempted by the amendment as well as the Fire Code.

These amendments do not significantly restrict placement of gas-fired devices in R-3 occupancies, which are the most common locations where these are found. The setback is only 3 feet, which is a typical minimum clearance specified in manufacturers’ guidelines for use and protects against ignition from radiant heat. The setback is 10’ for multifamily residential buildings due to the potential for an accidental fire to impact more people in larger structures. Smaller R-2s typically do not have this amenity installed in common areas for reasons other than available space (e.g., liability, maintenance, supervision). There is sufficient room for these devices on grade-level patios of most R-1s and roof-top amenity decks of R-1 and R-2 occupancies as evidenced by a multitude of approved projects that include an outdoor fireplace/pit.

The required setbacks of 25’/15’ for solid fuel-burning devices are derived directly from distances already specified in the Fire Code and are intended to prevent ignition of structures and other combustibles by sparks/embers coming from wood fires. This amendment allows placement of these devices *closer* to structures than normally permitted by the code when constructed in accordance with the building code as for a fireplace or when this hazard is mitigated by devices equipped with a spark arrester.

The restriction on solid-fuel fires in a fuel mod/wildfire risk area/wildland-urban interface provides a specific requirement for a recognized hazard based on similar restrictions already in the code that are intended to prevent unwanted ignition of fires. Fireplaces and other solid-fuel burning devices may be

Mr. Adam Wood
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permitted in areas outside of fuel-mod zones where the design or location of the device would reasonably prevent ignition of vegetation.

We can discuss your concerns about the verbiage or interpretation of B-01 and C-05 during our future meeting. Again, these are updated guidelines and were also in the 2019 code adoption. The C-05 added the State legislative law provisions and the B-01 updated various design standards, none of which circumvent city planning requirements or design standards. These documents serve as fire master planning for access, hydrants, water supply and fuel modification (where required). Our partner cities/county rely on us to provide these elements to each project.

Finally, I have a tremendous amount of respect for our City/County planning agencies and their charge. I also have the same respect for the development community that we engage with as we provide safe, adequate and sustaining neighborhoods. I am disappointed that the BIAOC is suggesting that the fire service should relinquish their legal charge and contribution to fire life safety planning. At your convenience please review the CFC Chapter 1 to better understand our charge.

Adam, we are not as far off as your membership may believe. The OCFA Community Risk Reduction department is acutely aware of the housing challenges that the cities/counties throughout the State are experiencing. We understand the housing shortage issues, zoning challenges, the ups and downs of financing, interest rates, property taxes and insurance rates. We are also sensitive to the needs of our communities and the needs of the housing industry as they collectively navigate State requirements.

I appreciate your feedback and look forward to further discussions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lori Smith".

Lori Smith
Assistant Chief Fire Marshal
Orange County Fire Authority

Cc: Orange County Building Officials