

ATTACHMENT 3



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 barbeques, 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.