**ORDINANCE NO. 23-08**

AN ORDINANCE OF THE MORAGA-ORINDA FIRE DISTRICT OF CONTRA COSTA COUNTY, CALIFORNIA, ADOPTING REQUIREMENTS FOR FUEL BREAKS ON CERTAIN PARCELS IN BOTH THE STATE RESPONSIBILITY AND LOCAL RESPONSIBILITY AREAS WITHIN THE FIRE DISTRICT, ADOPTING FINDINGS OF FACT REGARDING FIRE HAZARDS IN THE FIRE DISTRICT, ADOPTING FINDINGS OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND REPEALING ORDINANCE 23-04.

The Board of Directors, as the governing body of the Moraga-Orinda Fire District ("Fire District"), does ordain as follows:

## SECTION 1. AUTHORITY

This Ordinance is authorized by state statutes and regulations, including but not limited to Public Resources Code Sections 4117 and 4290, Health and Safety Code Sections 13801, 13804, 13861, 13862, and 13870, Government Code Section 51175, and Title 14, California Code of Regulations, Section 1270.05.

## SECTION 2. FINDINGS OF FACT

(a) The California Legislature has declared the following, at Government Code section 8654.2(a):

> Catastrophic threats exist to lives, property, and resources in California, including wildfire. Climate change, an epidemic of dead and dying trees, and the proliferation of new homes in the wildland urban interface magnify this threat and place substantially more people and property at risk than in preceding decades. More than 25 million acres of California wildlands are classified as under very high or extreme fire threat, extending that risk to over one-half of the state.

(b) The California Legislature has further declared the following, at Government Code section 51175(a):

> Wildfires are extremely costly, not only to property owners and residents, but also to local agencies. Wildfires pose a serious threat to the preservation of the public peace, health, or safety. The wildfire front is not the only source of risk since embers, or firebrands, travel far beyond the area impacted by the front and pose a risk of ignition to a structure or fuel on a site for a longer time. Since fires ignore civil boundaries, it is necessary that cities, counties, special districts, state agencies, and federal agencies work together to bring raging fires under control. Preventive measures are therefore needed to ensure the preservation of the public peace, health, or safety.

(c) In adopting AB 3074 in 2020, the California Legislature made, among others, the following findings:

i. Catastrophic wildfires pose an urgent threat to lives, properties, and resources in California. The state experienced the deadliest and most destructive wildfires in its history in 2017 and 2018. Fueled by five years of drought, unprecedented buildup of dry vegetation, and extreme winds, the size and intensity of recent wildfires caused the loss of more than 100 lives, the destruction of tens of thousands of homes and businesses, and the exposure of millions of urban and rural Californians to unhealthy air. Compared with fire activities in 1986, recent wildfires in the western United States have occurred nearly four times more often, burned more than six times the land area, and lasted almost five times as long.

ii. Climate change, an epidemic of dead and dying trees, a century of fire exclusion, and the proliferation of new homes in the wildland-urban interface magnify this threat and place substantially more people and property at risk than in preceding decades. More than 25,000,000 acres of California wildlands are classified as under very high or extreme fire threat, extending that risk over one-half of the state. More than 2,000,000 California households and approximately one in four residential structures in California are located within or near "high" or "very high" fire hazard severity zones identified on maps drawn by the Department of Forestry and Fire Protection.

iii. Certain populations in the state are particularly vulnerable to wildfire. These Californians live in communities that face near-term public safety threats given their location and geography. Some residents in these areas are made further vulnerable due to factors such as age and lack of mobility. The tragic loss of life and property in the Town of Paradise during the 2018 Camp Fire demonstrates that vulnerability.

(d) Public Resources Code Section 4290, adopted in 1987, requires the Board of Forestry and Fire Prevention ("the Board of Forestry") to adopt regulations implementing minimum fire safety standards in State Responsibility Areas, including regulations requiring fuel breaks, green belts, and signs for identifying streets, roads, and buildings. In 2018 the Legislature amended Section 4290 to require that the regulations also apply to areas within Local Responsibility Areas classified as very high fire hazard severity zones. Section 4290(c) provides that such regulations will not supersede more restrictive local regulations that equal or exceed the state regulations.

(e) In accordance with Public Resources Code Section 4290, the Board of Forestry has adopted regulations implementing such minimum fire safety standards. These regulations, established in the California Code of Regulations, Title 14, Sections 1270.00-1276.05 ("the Fire Safe Regulations"), include standards for fuel breaks as specifically mandated by Public Resources Code Section 4290(b), which states that the Board of Forestry shall, on and after July 21, 2021:

> Periodically update regulations for fuel breaks and greenbelts near communities to provide greater fire safety for the perimeters to all residential, commercial, and industrial building construction within state responsibility areas and lands classified and designated as very high fire hazard severity zones, as defined in subdivision (i) of Section 51177 of the Government Code, after July 1, 2021.

(f) In adopting the minimum fire safety standards, the Fire Safe Regulations provide the following:

i. The Fire Safe Regulations define "Defensible Space" as the area within the perimeter of a parcel, Development, neighborhood or community where basic wildland fire protection practices and measures are implemented, providing the key point of defense from an approaching Wildfire or defense against encroaching Wildfires or escaping Structure fires. The perimeter as used in this regulation is the area encompassing the parcel or parcels proposed for construction and/or Development, excluding the physical Structure itself. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, Road names and Building identification, and fuel modification measures. Cal. Code of Regulations, title 14, section 1270.01(f).

ii. The Fire Safe Regulations define "Fuel Break" as 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. Cal. Code of Regulations, title 14, section 1270.01(n).

iii. The Fire Safe Regulations define "Greenbelts" as open space, parks, wildlands, other areas, or a combination thereof, as designated by Local Jurisdictions, which are in, surround, or are adjacent to a city or urbanized area, that may function as Fuel Breaks and where Building construction is restricted or prohibited. Cal. Code of Regulations, title 14, section 1270.01(o).

iv. The Fire Safe Regulations provide a procedure whereby persons impacted by the Fire Safe Regulations may request an Exception from the Fire Safe Regulations requirements. Cal. Code of Regulations, title 14, section 1270.07. An Exception is defined as an alternative to the specified standard requested by the applicant that may be necessary due to health, safety, environmental conditions, physical site limitations or other limiting conditions, such as recorded historical sites, that provides mitigation of the problem. Cal. Code of Regulations, title 14, section 1270.01.

(g) Pursuant to a Notice of Exemption filed on August 19, 2022, the California Board of Forestry and Fire Protection determined, among other things, that the Fire Safe Regulations setting standards for fuel breaks and greenbelts near communities were categorically exempt from the California Environmental Quality Act (CEQA) as actions by regulatory agencies to protect natural resources and the environment. The Notice of Exemption stated, in pertinent part:

> The proposed regulatory amendments are intended to minimize structure fires and wildfire that lead to environmental and natural resources impacts, including loss of vegetation and biodiversity; erosion, landslides, and debris flows; adverse air quality, climate change, and water quality impacts; and contaminated and hazardous material disposal challenges. These environmental and natural resources effects can also lead to public health impacts.

(h) The California Department of Forestry and Fire Protection has also declared that the regulation of hazardous fire areas in accordance with Public Resources Code section 4290 is categorically exempt from CEQA as actions by regulatory agencies for protection of natural resources or protection of the environment. Cal. Code of Regulations, title 14, section 1153(c).

(i) Fuel breaks are a critical tool intended to reduce fire spread rates and intensity to allow the timely containment of wildfire. By interrupting the continuity of the fuel beds through which fire spreads, their presence decreases the potential for small fires spreading to the lands of another and slows the rate at which large fires travel, buying time for orderly evacuations and the aggregation of an effective firefighting response for the protection of lives and structures.

(j) On October 27, 2021, the California Department of Forestry and Fire Protection ("CAL FIRE") delegated to the Moraga-Orinda Fire District the authority to inspect and enforce the Fire Safe Regulations promulgated under Section 4290. The standards for fuel breaks in this Ordinance are consistent with that delegation and with the provisions of Public Resources Code Sections 4117 and 4290(c). The standards for construction of fuel breaks in this Ordinance are also consistent with the standards for construction of fuel breaks as outlined in the Fire Safe Regulations, which are as follows:

i. The volume and arrangement of vegetation in a Fuel Break shall be managed to limit fire intensity, fire severity, rate of spread, crown fire potential, and/or ember production. Cal. Code of Regulations, title 14, section 1270.01(n).

ii. Fuel Breaks shall be constructed using the most ecologically and site appropriate treatment option, such as, but not limited to, prescribed burning, manual treatment, mechanical treatment, prescribed herbivory, and targeted ground application of herbicides. Cal. Code of Regulations, title 14, section 1276.03(f).

(k) Pursuant to Section 4117 of the Public Resources Code, which provides that fire prevention districts may adopt ordinances providing fire prevention regulations that are necessary "to meet local conditions of weather, vegetation, or other fire hazards," the Board of Directors of the Fire District finds that the fuel break standards in this Ordinance are necessary in light of the wildfire hazards created by the following local conditions and environmental concerns.

i. Weather/Climatic Conditions

A. Discussion

The Fire District is the gateway to central Contra Costa County. It is located amongst rolling hills and valleys created by the Berkeley/Oakland hills to the west and open plains of central Contra Costa County to the east. Due to its location, the Fire District's climate is more varied than that of its neighbors. The Fire District receives slightly more rainfall than areas further inland and often, during the summer months, portions of the Fire District are enveloped in fog as the heat in the Central Valley draws cool air in from the San Francisco Bay. However, the Fire District also experiences the hot, dry summer weather that is characteristic of central Contra Costa County's

Mediterranean Climate. This climate is suited to native grasslands, chaparral, oaks and other indigenous plant species for the area. The milder climate encouraged early development in the Fire District, resulting in the construction of primarily residential areas surrounded by large numbers of non-native plant species. Due to the systematic exclusion of naturally occurring fire for over 100 years and a reduction in historical grazing activity as pasture has been developed, these native and non-native plant species have created significant fuel loads throughout the Fire District. Due to the location of the Fire District Hills, in the fall, the hot dry summer weather with maritime influence cooling in the evenings, gives way to Diablo Wind events characterized by high winds from the northeast and very low relative humidity. These conditions have contributed to major fire loss in the region and throughout the state with 17 of the 20 most destructive fires in California history occurring in the fall. Due to climate change caused disruptions to historical weather patterns, the Fire District is exposed to more of these wind events as a result of delayed onset of seasonal rains, thus increasing the risk of major fires.

In September 1923, during critical climatic fire conditions characterized by hot, dry Diablo winds out of the northeast a fire started in the wilderness lands of the Fire District's northern area. This fire spread into the city of Berkeley and within two hours was consuming houses within the City limits. A total of 130 acres in the built environment burned causing the destruction of 584 buildings with roughly 30 others seriously damaged. At this time, this was the most destructive fire in California history.

In September 1970, during critical climatic fire conditions characterized by hot, dry Diablo winds out of the northeast, a fire started along Fish Ranch Road and Grizzly Peak on the District's western boundary. This fire rapidly spread into the surrounding neighborhoods of Oakland burning 400 acres and destroying 37 homes. An additional 18 homes were badly damaged before the fire was brought under control.

In August 1988, during maritime influence winds out of the west, a small fire started near Crestview in Lost Valley and within minutes destroyed 5 homes. This fire's spread rate was increased by the prevalence of light flashy fuels, and steep slopes in alignment with strong winds.

In October 1991, during a Diablo wind event a disastrous firestorm burned through the Oakland hills from an ignition point just west of the Fire District's border. Within the first few hours, thousands of people were evacuated. Ultimately over 3,000 dwelling units were destroyed in what replaced the 1923 fire as the most destructive fire in California history.

On October 27th, 2019, sustained single digit relative humidity and 30+ mph winds created explosive fire conditions throughout the region. On the same day that the Kincaide fire burned in Sonoma County, five major fires broke out in Contra Costa County. Three of these fires burned in proximity to the Fire District in Lafayette, Crockett, and Martinez and resulted in the depletion of available mutual aid resources as available firefighting units were committed to each new fire. Each of these fires included rapid spotting ahead of the main body of fire, allowing progression across significant features such as State Highway 24 and State Highway 4.

Throughout the Fire District, homes are surrounded by heavy vegetation with interspersed open areas, creating a semi-rural character. The resulting exposure to wildfire risk is increased by the desiccating effects of low humidity, high wind conditions during the fire season. During May to October, critical climatic fire conditions regularly occur when the temperature exceeds 80F, wind speed is greater than 15 mph, fuel moisture is less than or equal to 10 percent, wind direction is from north to the east-southeast and the ignition component is 65 or greater. These conditions occur more frequently during the fire season but this does not preclude the possibility that a serious fire could occur during other months of the year.

The critical climate fire conditions create a situation conducive to fast moving wind driven fires that may overwhelm firefighting resources due to their speed. Fires starting in the wildland areas along the northern border of the district are likely to move rapidly southward into the populated areas creating the potential for significant property loss and a very challenging evacuation problem.

B. Summary.

Local climatic conditions of limited rainfall, low humidity, high temperatures and high winds during the fall months, combined with existing building construction and high fuel load landscaping create extremely hazardous fire conditions that adversely affect the potential fire line intensity, spread rates, and size of fires in the Fire District. The same climatic conditions may result in the concurrent occurrence of multiple fires in the Fire District or throughout the region resulting in inadequate fire department personnel to protect against and control these fires.

ii. Vegetative Conditions

A. Discussion.

The Fire District is situated in a fire dependent landscape with a natural fire return interval of three to five years. Due to the exclusion of fire and the planting or establishment of non-native species, many of which are not fire resistant, significant vegetative fuel loading is present in both the developed areas of Moraga, Orinda, Canyon, and Bollinger Canyon and the watershed and parklands surrounding the community. Many of these areas also border the developed areas of surrounding communities. Prior to the exclusion of fire and development of residential subdivisions, the natural landscape was characterized by a varied fuel mosaic, with multi-age class vegetation. The current landscape is dominated by overgrown mature vegetation with high dead fuel levels.

This vegetation can be characterized in the following fuel types:

**Fuel Model 1: Short Grass.** The fine, very porous, and continuous herbaceous fuels that have cured or are nearly cured govern fire spread. These are surface fires that move rapidly through the cured grass and associated material. Very little shrub or timber overstory is present, generally less than 1/3 of the area. Both annual and perennial grasses are included; grasslands and savannas are represented along with grass-shrub combinations that meet the above area constraint.

Fuel Model Values for Estimating Fire Behavior
Total Fuel Load, < 3-inch dead & live 0.74 tons/acre
Dead Fuel Load, 0 - ¼-inch 0.74 tons/acre
Live fuel Load, foliage 0 tons/acre
Fuel Bed Depth 1.0 feet

**Fuel Model 2: Grass with Timber/Shrub Overstory**. Fire spread is primarily through the fine herbaceous fuels, either curing or dead. These are surface fires where the herbaceous material, in addition to the litter and dead/down stem and branch wood from the open shrub and/or timber overstory, contribute to the fire intensity. Open shrub lands or pine/oak/dry Douglas-fir stands that cover 1/3 to 2/3 of the area may generally fit this model; such stands may include clumps of fuels that generate higher intensities and that may produce firebrands.

Fuel Model Values for Estimating Fire Behavior
Total Fuel Load, < 3-inch dead & live 4.0 tons/acre
Dead Fuel Load, 0 - ¼-inch 2.0 tons/acre
Live fuel Load, foliage 0.5 tons/acre
Fuel Bed Depth 1.0 feet

**Fuel Model 4: Mature Brush.** Fire intensity and fast-spreading fires involve the foliage and live and dead fine woody material in the crowns of a nearly continuous secondary overstory. Stands of mature shrubs, 6 or more feet tall, such as California and Oregon mixed chaparral with flammable (volatile) foliage and a significant dead component fit this model. A deep litter layer may also be present.

Fuel Model Values for Estimating Fire
Total Fuel Load, < 3-inch dead & live 13.0 tons/acre
Dead Fuel Load, 0 - ¼-inch 5.0 tons/acre
Live fuel Load, foliage 5.0 tons/acre
Fuel Bed Depth 6.0+ feet

**Fuel Model 10: Mature/Overmature Timber and Understory**. Fires will burn in the surface and ground fuels with greater intensity than the other timber litter models. Dead-down fuels include greater quantities of 3-inch or larger limb wood resulting from over maturity or natural events that create a large load of dead material on the forest floor. Crowning out, spotting, and torching of individual trees is more frequent in this fuel model. Any forest type may be considered if heavy down material is present.

Fuel Model Values for Estimating Fire Behavior
Total Fuel Load, < 3-inch dead & live 12.0 tons/acre
Dead Fuel Load, 0 - ¼-inch 3.0 tons/acre
Live fuel Load, foliage 2.0 tons/acre
Fuel Bed Depth 1.0 feet

Lighter grass fuel models support fast moving fires due to the availability of fine fuels, while heavier brush and timber fuel models support slower spread rates with higher fire line intensity and increased spotting. The mix of these fuel models in and around the Fire District, make it likely that a fire will be both fast moving through light fuels with

high intensity, ember producing pockets of heavy fuels. Once fire enters the built environment, older structures may provide the fuel capable of carrying the fire through both ground component structure to structure spread supported by radiant heat and wind driven ember cast. In these cases, the presence of fuels with horizontal and vertical continuity is needed to sustain rapid fire spread. Disrupting the continuity of these fuels through fuel management can mimic the natural state of a varied fuel mosaic, resulting in lower spread rates and additional time for the evacuation of residents and the aggregation of an effective fire fighting force from throughout the region. With additional time and additional resources, wildfire outcomes can be managed to reduce the risk to lives, property, and the environment.

B. Summary.

Vegetation has developed and dead vegetation has accumulated in a manner that supports rapid wildfire spread. Vegetation management practices can mimic the natural state and reduce the potential for destructive wildfire.

iii. Other Fire Hazards

A. Geological Conditions

1. Discussion.

The Fire District is in a region of high seismic activity with the Hayward fault running just west of its border. The San Andreas fault is farther to the west and the Calaveras fault to the east. All three faults are known to be active as evidenced by the damaging earthquakes they have produced in the last 100 years and can, therefore, be expected to do the same in the future. Of primary concern to the Fire District is the Hayward Fault, which has been estimated to be capable of earthquakes exceeding a magnitude of 7.0 on the Richter scale. A large number of underground utilities cross the fault, including major water supply lines. Intensified damage during an earthquake may be expected in slide areas, as well as residential hillside areas located within or near the fault zone; some areas are steep and have previously been subjected to slides.

Additional potential events following an earthquake include broken natural gas mains and ensuing fires in the streets; building fires, as the result of broken service connections; trapped occupants in collapsed structures; and requirements to render first aid and other medical attention to a large number of residents.

2. Summary

Local geological conditions include high potential for seismic activity. The Fire District is made up of built up suburban areas having buildings and structures constructed near three major fault systems capable of producing major earthquakes, the modifications cited herein are intended to better limit life safety hazards and property damage in the aftermath of seismic activity.

B. Topographical Conditions

1. Discussion.

The Fire District has many homes that are reached by narrow and winding paved streets which hamper access for firefighting resources and provide limited evacuation capacity for residents. In addition, many of the hillside homes are in outlying areas that require longer response times for the total required firefighting force. El Toyonal, Sleepy Hollow, the Downs and other areas with limited access via narrow and winding streets may face the problem of isolation from the rest of the Fire District and will suffer from the need for two-way traffic as evacuation and suppression response travel in opposite directions over limited roadways.

Effective road widths are further reduced by encroaching vegetation and mid-slope roads built without shoulders. This is particularly pronounced in older neighborhoods of North Orinda, some of which were laid out in the 1920s when vehicles were smaller, codes less stringent, and the areas total development potential was not considered.

Due to steep slopes that characterize many areas of the Fire District, the establishment of additional infrastructure to support adequate fire protection needs is not feasible. It is difficult to widen existing streets to meet present standards for emergency operations. Older areas of the fire district have also been identified as having inadequate firefighting water supply due to less stringent codes in effect when they were developed.

Portions of the Fire District have limited roadways that delay the response of emergency equipment to carry out the extinguishment of a fire. This delay will allow a fire to increase in area and build momentum until firefighting resources can access the area.

The District's topography is variable and characterized by hillslopes, valleys, ridges, ravines, canyons, and plateaus. These topographic features can accentuate the climatic drivers to increased fire risk described above, including topographic, micro-climate, and fire storm induced extreme velocity winds which can move a wildfire across the landscape at tremendous speeds, including the ability to jump large perceived barriers such as Highway 24, as was breached in the 1991 Oakland Hills Fire.

2. Summary.

Local topographical conditions include hillside housing with many narrow and winding streets with slide potential for blockage and limited firefighting water supply. These conditions create the potential for delays in responding when a major fire or earthquake occurs. Many situations will result in limiting or total blockage of fire department emergency vehicular traffic, overtaxed fire department personnel and a lack of resources for the suppression of fire in both structures and vegetated areas in the Fire District.

C. Communities at Risk

The California Department of Forestry and Fire Protection, Fire and Resource Assessment Program, has produced a publication entitled, "Communities at Risk from Wild Fires," pursuant to the National Fire Plan, federal Fiscal Year 2001 Department of the Interior and Related Agencies Appropriations Act (Public Law 106-291). https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/fire-plan/communities-at-risk/. This publication identifies communities within the State of California that are at high risk of damage from wildfire.

The publication identifies communities at risk that lie within the District's boundaries, and communities at risk that are adjacent to the District's boundaries.

(l) Environmental Damage

i. Uncontrolled wildfire causes significant environmental impacts in the Fire District. These impacts include loss of vegetation and biodiversity; the potential for post fire erosion, landslides, and debris flows; adverse air quality, increased greenhouse gases (GHGs), climate change, and water quality impacts; and contaminated and hazardous material disposal challenges. These impacts in turn can damage and sometimes destroy local natural resources.

ii. Wildfires are inevitable in a fire dependent ecosystem such as California. They often occur and spread unexpectedly and with surprising speed. They cause immense damage every year, putting lives and property in clear and imminent danger. In the absence of measures to manage outcomes, wildfire is likely to lead to structure loss and damage to the environment as a result of uncontrolled fast moving and high intensity fires. As stated under Sections 2(a), 2(b) and 2(c) of this Ordinance, the California Legislature has found that "Catastrophic wildfires pose an urgent threat to lives, properties, and resources in California." Since October 30, 2015, the State has been under a Governor's State of Emergency Proclamation due to the increased risk of wildfires related to vast tree mortality. In addition, according to the California Office of Emergency's website, the State is currently under twenty-four separate State of Emergency Proclamations issued by the Governor related to wildfires. https://www.caloes.ca.gov/office-of-the-director/policy-administration/legal-affairs/emergency-proclamations/

iii. The need for immediate action to prevent wildfire and its associated damage to life, health, property, and essential public services is also well-documented. In recent years the Governor has repeatedly issued emergency proclamations related to fire – five in 2022, seven in 2021, and six in 2020. These both evidence and acknowledge the need for immediate action to address wildfire hazards, particularly in fire-prone areas within the state.

iv. Uncontrolled wildfires are emergencies, involving clear and imminent dangers which demand immediate action to prevent or mitigate loss of, or damage, to life, health, property, and essential public services. This Ordinance establishes actions necessary to reduce the probability and severity of such emergencies.

v. Establishment of fuel breaks to create a varied fuel mosaic, mimicking the natural environment through zones of vegetation removal and ongoing maintenance, passively interrupts the path of a fire or slows its progress. This work also aids fire suppression by providing responders with anchor points from which to carry out fire control actions. Modeling efforts have indicated that this approach can reduce total area burned, structure destruction, and fire intensity. Because this Ordinance would bolster firefighting capabilities that would enhance fire response the Ordinance will unequivocally support protection of the environment and natural resources.

vi. When designed as a fuel break, greenbelts that are part of community design within neighborhoods and subdivisions can increase wildfire resilience by slowing or stopping wildfires. Additionally, existing parks, open spaces, and preserves near communities are often used for firefighting. These undeveloped lands with pre-established passive fire control measures in place provide locations from which firefighters carry out offensive and defensive fire control actions before densely populated areas are impacted. This is a critical element to efforts to reduce the probability of urban conflagration characterized by structure-to-structure fire transmission.

vii. The Ordinance is intended to minimize structure fires and wildfire that lead to environmental and natural resources impacts, including loss of vegetation and biodiversity; erosion, landslides, and debris flows; adverse air quality, climate change, and water quality impacts; and contaminated and hazardous material disposal challenges. These environmental and natural resources effects can also lead to public health impacts.

viii. Furthermore, fires that occur in the built environment (i.e., structure fires) contribute to air contamination from the fire plume (whose deposition is likely to subsequently include land and water contamination), contamination from water runoff containing toxic products, and other environmental discharges or releases from burned materials.

ix. By reducing the severity of wildfire, studies have shown that low intensity, controlled fire, enhances biodiversity, by controlling invasive and noxious weed species, thereby allowing native plants to compete more effectively, as well as opening overgrown understory to allow for wildlife to move more freely across the landscape. Additionally, several of the endemic species of the region require fire to germinate. With low-intensity fire, the chaparral habitat would become more stratified in life stages, and thereby increasing its fire resiliency.

x. Reducing the severity of wildfire through this Ordinance would reduce the significant environmental impacts caused by uncontrolled wildfire and assure the

maintenance, restoration, enhancement, and protection of the Fire District's natural resources and environment.

## SECTION 3. DEFINITIONS

**Combustible Material.** Rubbish, litter, or material of any kind, other than Hazardous Vegetation, that is combustible and endangers the public safety by creating a Fire Hazard as determined by the Fire Code Official.

**Defensible Space.** This term shall have the same definition as "Defensible Space" in the Fire Safe Regulations, California Code of Regulations, title 14, section 1270.01(f).

**Fire Code Official.** The Fire Chief or their duly authorized representatives.

**Fuel Break.** This term shall have the same definition as "Fuel Break" in the Fire Safe Regulations, California Code of Regulations, title 14, section 1270.01(n).

**Fire Hazard.** Any condition, arrangement, or act that will increase, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire, or that may obstruct, delay, or hinder, or may become the cause of obstruction, delay, or hindrance, to the prevention, suppression, or extinguishment of fire.

**Hazardous Vegetation.** Vegetation that is combustible and endangers the public safety by creating a Fire Hazard, including but not limited to bark, mulch, seasonal and recurrent grasses, weeds, stubble, dry leaves, dry needles, or any other vegetation identified by the Fire Code Official. Hazardous Vegetation shall not include healthy, mature, scenic, trees.

**Ladder Fuel.** Fuel that provides vertical continuity between surface fuel and canopy fuel strata, increasing the likelihood that fire will carry from surface fuel into the crowns of shrubs and trees.

**Modification.** An alternative to the specified standard requested by a person that owns, leases, or controls one or more of the Affected Parcels that may be necessary due to health, safety, environmental conditions, physical site limitations or other limiting conditions, such as recorded historical sites, that provides mitigation of the problem.

**Parcel.** A portion of real property of any size, which may be identified by an Assessor's Parcel Number, the area of which is determined by the legal lot of record.

**Person.** Includes any agency of the state, a county, city, district, or other local public agency, and any individual, firm, association, partnership, business trust, corporation, limited liability company, or company.

**Same Practical Effect.** This term shall have the same definition as "Same Practical Effect" in the Fire Safe Regulations, California Code of Regulations, title 14, section 1270.01(a)(a).

**SECTION 4. FUEL BREAKS TO PROTECT AGAINST UNCONTROLLED WILDFIRE SPREAD**

(a) Fuel Break Standards.

(1) For the purpose of this Ordinance, a Fuel Break requires the removal or modification of fuel, maintained on an annual basis by June 1 of each year, or on a recurring basis as determined by the Fire Code Official, in a manner that will prevent the transmission of fire.

Specifically:

(A) Grasses cut to less than 3".

(B) Removal of all Hazardous Vegetation.

(C) Non-irrigated brush removed such that the minimum space between shrubs is as follows:

a. On flat or mild slopes (less than 20%): Two times the height of the shrub
b. On mild to moderate slopes (20-40%): Four times the height of the shrub
c. On moderate to steep slopes (greater than 40%): Six times the height of the shrub.

(D) Removal of all Combustible Material.

(E) Removal of dead, diseased, or dying trees.

(F) Maintain trees to remove Ladder Fuels so that foliage, twigs, or branches are (1) greater than 6 feet above the ground for trees fifteen feet or taller and (2) at least one-third of the height of the tree above the ground for trees less than fifteen feet tall.

(2) The standards for construction of Fuel Breaks in this Ordinance shall comply with the standards for construction of fuel breaks as outlined in the Fire Safe Regulations, which are as follows:

(A) The volume and arrangement of vegetation in a Fuel Break shall be managed to limit fire intensity, fire severity, rate of spread, crown fire potential, and/or ember production. Cal. Code of Regulations, title 14, section 1270.01(n).

(B) Fuel Breaks shall be constructed using the most ecologically and site appropriate treatment option, such as, but not limited to, prescribed burning, manual treatment, mechanical treatment, prescribed

herbivory, and targeted ground application of herbicides. Cal. Code of Regulations, title 14, section 1276.03(f).

(b) Fuel Break Affected Parcels. To reduce the risk of uncontrolled wildfire, Fuel Breaks are required on the following Parcels in the Fire District, identified as the "Affected Parcels."

(1) All Parcels within the District located within a "Community at Risk" as identified in the publication entitled, "Communities at Risk from Wild Fires," produced by the California Department of Forestry and Fire Protection, Fire and Resource Assessment Program pursuant to the National Fire Plan, federal Fiscal Year 2001 Department of the Interior and Related Agencies Appropriations Act (Public Law 106-291). https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/fire-plan/communities-at-risk/

(2) All Parcels within the District that are immediately adjoining to a "Community at Risk" within the District, or are immediately adjoining to a "Community at Risk" outside the District's boundaries.

(3) All Parcels within the District, located in the unincorporated area of Contra Costa County, which have at least one habitable structure.

(4) All Parcels within the District that are immediately adjoining to a Parcel or Parcels described in subparagraph (3) above.

(c) Fuel Break Requirements.

(1) A person who owns, leases, or controls one or more Affected Parcels within the Fire District shall comply with following fuel break standards:

(A) Parcels of One Acre or Less. The entire Parcel shall be maintained in accordance with Section 4(a)'s requirements for a Fuel Break.

(B) Parcels Greater Than One Acre. A Fuel Break of 100 feet shall be created and maintained around the entire perimeter of the Parcel in accordance with Section 4(a)'s requirements for a Fuel Break.

(C) Multiple contiguous Affected Parcels owned by the same Person may be treated as a single Parcel, upon request of the Person that owns, leases, or controls one or more of the Affected Parcels and with the approval of the Fire Code Official, if a Fuel Break of 100 feet around the perimeter of the area considered to be a single Parcel is provided. Such requests shall be processed as Modifications under Section 5 of this Ordinance.

(d) Environmental Concerns.

(1) The Fuel Break requirements of this Ordinance shall not impact any environmental resources of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. Such areas include, but are not limited to, sites included on any list compiled pursuant to Government Code section 65962.5, and designated historical resources.

(2) The Fuel Break requirements of this Ordinance shall be interpreted and applied to avoid the taking of endangered, rare, or threatened plant or animal species, significant erosion and sedimentation of surface waters, and the removal of healthy, mature, scenic trees.

(3) When the conditions stated in this Section 4(d) exist, persons who own, lease or control the Affected Parcel or Parcels at issue shall request a Modification of the fuel mitigation requirements and the Fire Code Official shall issue Modifications consistent with the requirements of this subsection.

**SECTION 5. MODIFICATIONS**

(a) Where there are practical difficulties involved in carrying out the provisions of this Ordinance, the Fire Code Official shall have the authority to grant Modifications for individual cases, provided that the Fire Code Official shall first find that either (1) a modification is necessary to address an environmental concern as required by the provisions of this Ordinance, or (2) special individual reasons make the strict letter of this Ordinance impractical, and the Modification is in compliance with the intent and purpose of this Ordinance. The details of actions granting a Modification shall be recorded and entered in the files of the Fire District. Any such Modification shall be consistent with the following standards:

(1) The modification will not lessen health, life and fire safety requirements.

(2) The modification will provide for the Same Practical Effect in addressing fire hazards as stated in this Ordinance.

(3) The modification will comply with Section 4(d) (Environmental Concerns) of this Ordinance.

(b) A person requesting a Modification may also submit an individualized fire protection plan designed to address concerns due to health, safety, environmental

conditions, physical site limitations or other limiting conditions, such as recorded historical sites, that provides mitigation of the problem. Submitted fire protection plans shall be consistent with the standards for fire protection plans provided in Section 4903 of Chapter 49 of the State Fire Code.

(c) Where a Modification is not granted, the person requesting the Modification may appeal such denial to the Board of Directors.

(1) Within ten calendar days from service of the Fire Code Official's decision denying the requested Modification, the person seeking the Modification may appeal the decision to the Board of Directors. Such appeal must be in writing and filed with the Fire Code Official.

(2) At a regular or special meeting of the Board of Directors not less than five days or more than thirty days after receipt of an appeal, the Board of Directors shall hear the appeal.

(3) The Board of Directors may continue the hearing.

(4) Upon conclusion of the hearing, the Board shall issue a decision granting, modifying, or denying the requested Modification.

(5) The decision of the Board of Directors is final.

(d) Additional procedures for the conduct of appeals may be established by resolution of the Board of Directors.

**SECTION 6. PENALTIES.**

Every violation of any regulatory or prohibitory provision of this Ordinance is expressly declared to be a public nuisance. Failure to comply with the Fuel Break requirements of this Ordinance may result in the issuance of an Administrative Citation under Ordinance 21-01 or its successor ordinance, or otherwise ordered by the Fire Code Official to be abated in accordance with law, and nothing in this Section 6 shall limit the Fire District from pursuing other available legal remedies for violations of this Ordinance, including but not limited to civil penalties. In addition, any Person who violates any provision of this Ordinance shall be guilty of an infraction or misdemeanor in accordance with Health and Safety Code Section 13871.

**SECTION 7. REPEAL OF ORDINANCE 23-04.**

Ordinance 23-04, which adopted requirements for fuel breaks on all parcels in the Fire District, is hereby repealed and is not subject to the savings clause in Section 8(b) of this Ordinance.

**SECTION 8. SEVERABILITY.**

(a) If any section, subsection, paragraph, sentence, or clause of this Ordinance is determined in a final ruling by a court of competent jurisdiction to be invalid or unenforceable, such finding shall not invalidate any remaining portions of the Ordinance. The Board of Directors hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, or clause thereof, irrespective of the fact that any portion of the Ordinance be declared invalid.

(b) All former ordinances and resolutions, or parts thereof, conflicting with the provisions of this ordinance are hereby superseded by this Ordinance. The adoption of this ordinance shall not in any manner affect any action or prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee, or penalty required by or resulting from any such ordinance, or affect the validity of any bond (or cash deposit in lieu thereof) required to be posted, filed, or deposited pursuant to such ordinance.

**SECTION 9. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

(a) The District finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the following categorical exemptions in the CEQA Guidelines: Section 15307 (actions taken as authorized by law to assure protection of natural resources), and Section 15308 (actions taken as authorized by law to assure protection of the environment). Reducing the severity of wildfire through this Ordinance would reduce the significant environmental impacts caused by uncontrolled wildfire and assure the maintenance, restoration, enhancement, and protection of the Fire District's natural resources and environment.

There are no significant or potentially significant negative environmental impacts from this Ordinance.

- The Ordinance is a regulatory change that would not directly cause any reasonably foreseeable physical change, nor would it determine or cause any future development.

- Indirect physical changes would require removal of flammable materials in areas with heightened risk to cause and spread wildfires. This would reduce environmental threats caused by wildfires and their spread and would be beneficial to the environment. The benefits of making wildfires less likely to start and spread include but are not limited to, benefits in the areas of air quality, biological resources, cultural and historical resources, hazards, greenhouse gas emissions, recreation, and tribal cultural resources.

- The Ordinance does not impact environmental resources of hazardous or critical concern where designated, precisely mapped, and officially

adopted pursuant to law by federal, state, or local agencies. Such areas include, but are not limited to, sites included on any list compiled pursuant to Government Code section 65962.5, and designated historical resources

- The Ordinance also is required to be interpreted and applied to avoid the taking of any special status species, significant erosion and sedimentation of surface waters, and the removal of healthy, mature, scenic trees.

- If compliance with the Ordinance could cause adverse environmental consequences, property owners are directed to request a modification of the fuel break requirements from the District.

No exception identified in CEQA Guideline Section 15300.2 applies to this Ordinance.

(b) The District also finds that this Ordinance is statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15269 and Public Resources Code section 21080(a)(4) as specific actions necessary to prevent or mitigate an emergency.

(c) The District further finds that it can be seen with certainty that there is no possibility that the Ordinance may have a significant impact on the environment pursuant to CEQA Guidelines section 15601(b)(3). The Ordinance is proposed for the protection of the environment, including human health and property. The regulatory enactment would require affected properties to remove combustible materials as fuel breaks.

These requirements will be beneficial to the environment by preventing the emergence and spread of wildfires, which can cause immense environmental harm. Further, the Ordinance contains provisions requiring it to be interpreted and implemented in a manner that avoids environmental impacts, and directs property owners to seek modification of the applicable requirements if compliance would cause any such impacts. Due to these requirements, there is no possibility that it will cause significant environmental effects.

(d) Each exemption stands as a separate and independent basis for determining that this Ordinance is not subject to CEQA.

**SECTION 10. DATE OF EFFECT.**

This Ordinance shall become effective on October 23, 2023, and within fifteen (15) days of passage shall be published once, with the names of the Directors voting for and against, in the Contra Costa Times, a newspaper of general circulation in the District.

**PASSED, APPROVED, and ADOPTED** this 20th day of September 2023 at the regular meeting of the District Board of Directors, held at 22 Orinda Way, Orinda, California 94563 on September 20, 2023, on a motion made by Director Danziger and seconded by Director Roemer and duly carried with the following vote:

AYES: DIRECTORS DANZIGER, HASLER, ROEMER, AND JEX

NOES: NONE

ABSENT: DIRECTOR JORGENS

ABSTAIN: NONE

**ORDINANCE 23-08**

ATTEST:

John Jex, President
Board of Directors

I certify that this is a full, true, and correct copy of the original document, which is on file in my office, was passed and adopted by the Moraga-Orinda Fire District on the date shown.

ATTEST:

Marcia Holbrook
District Secretary/District Clerk

APPROVED AS TO FORM:

Jonathan V. Holtzman
District Counsel