

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2019-__

AN ORDINANCE OF THE CITY OF SAN LEANDRO ADDING CHAPTER 23 OF TITLE 3 OF THE SAN LEANDRO CITY MUNICIPAL CODE (MANAGEMENT OF PCBs DURING BUILDING DEMOLITION PROJECTS)

SECTION 1.

WHEREAS, polychlorinated biphenyls (PCBs) have been detected in elevated levels in fish and sediment in the San Francisco Bay making fish unsafe to eat; and

WHEREAS, urban runoff through municipal separate storm sewers systems (MS4s) is considered the most significant measurable pathway for PCBs into the Bay; and

WHEREAS, PCBs in certain priority building materials used in building construction projects between January 1, 1950 to December 31, 1980 have been found to have particularly high PCBs concentrations; and

WHEREAS, the San Francisco Bay Regional Water Quality Control Board adopted in 2015 the reissued Municipal Regional Permit (MRP), Order No. R2-2015-0049, updating the National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from MS4s; and

WHEREAS, the MRP requires the permittees, including the City of San Leandro, to reduce discharges of PCBs in stormwater runoff into San Francisco Bay; and

WHEREAS, the MRP requires permittees, including the City of San Leandro, to develop and implement new programs to manage PCBs-containing building materials during demolition; and

WHEREAS, the MRP specifically requires permittees to require that demolition permits for buildings built or remodeled between January 1, 1950 to December 31, 1980 be screened for PCBs-containing building materials; and

WHEREAS, remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt from the screening for the presence of PCBs in priority building materials; and

WHEREAS, adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15308 of the CEQA Guidelines, exempting actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment; and

WHEREAS, the City Council desires to adopt this Ordinance in order to reduce PCBs in stormwater runoff originating in the City of San Leandro; and

WHEREAS, the City Council authorizes the Building Division in the Community Development Department develop, implement, and promulgate regulations and procedures to create and manage the program, including conditions of approval, demolition permit requirements, and related forms; and

WHEREAS, the Building Division shall develop the appropriate permit fees and/or other cost recovery mechanisms, if determined necessary, for subsequent City Council approval and insertion into the City of San Leandro's master fee schedule at a later date.

SECTION 2. NOW, THEREFORE, the City Council of the City of San Leandro does ORDAIN as follows:

3-23-100. Purpose

(a) The provisions of this Article shall be construed to accomplish the following purposes:

1. Require building demolition permit applicants (Applicants) to conduct a PCBs in Priority Building Materials Screening Assessment and submit information documenting the results of the screening. Such documentation to include (1) the results of a determination whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction, and (2) the concentration of PCBs in each Priority Building Material present and, (3) for each Priority Building Material present with a PCBs concentration equal to or greater than 50 ppm, the approximate amount (linear feet or square feet) of that material in the building.

2. Inform Applicants with PCBs present in one or more of the Priority Building Materials (based on the above screening assessment) that they must comply with all related applicable federal and state laws. This may include reporting to the U.S. Environmental Protection Agency (EPA), the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), and/or the California Department of Toxic Substances Control (DTSC). Additional sampling for and abatement of PCBs may be required.

3. Meet the requirements of the Federal Clean Water Act, the California Porter-Cologne Water Quality Control Act, and the Municipal Regional Stormwater Permit Order No. R2-2015-0049.

(b) The requirements of this ordinance do not replace or supplant the requirements of California or Federal law, including but not limited to the Toxic Substances Control Act, 40 Code of Federal Regulations (CFR) Part 761, and California Code of Regulations (CCR) Title 22.

3-23-200. Definitions

In addition to the general definitions applicable to this Code, whenever used in this Article, the following terms shall have the meanings set forth below:

(a) "Applicable Structure" means buildings constructed or remodeled from January 1, 1950 to December 31, 1980. Remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt.

(b) “Applicant” means a person applying for a building demolition permit as required by Chapter 7-5, Article 1, Section 105.1 *et seq.*

(c) “Appropriate Authority” means the Building Division of the Community Development Department of the City of San Leandro.

(d) “Building” means a structure with a roof and walls standing more or less permanently in one place. Buildings are intended for human habitation or occupancy.

(e) “Demolition” means the wrecking, razing, or tearing down of any structure. This definition is intended to be consistent with the demolition activities undertaken by contractors with a C-21 Building Moving/Demolition Contractor’s License.

(f) “DTSC” means the State of California Department of Toxic Substances Control.

(g) “EPA” means the United States Environmental Protection Agency.

(h) “PCBs” means polychlorinated biphenyls.

(i) “PCBs in Priority Building Materials Screening Assessment” means the two-step process used to 1) determine whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction; and if so 2) determine the concentrations (if any) of PCBs in Priority Building Materials revealed through existing information or representative sampling and chemical analysis of the Priority Building Materials in the building. Directions for this process are provided in the PCBs in the Priority Building Materials Screening Assessment Applicant Package.

(j) “Priority Building Materials” means the following:

a. Caulking: e.g., around windows and doors, at structure walkway interfaces, and in expansion joints;

b. Thermal/Fiberglass Insulation: e.g., around HVAC systems, around heaters, around boilers, around heated transfer piping, and inside walls or crawl spaces;

c. Adhesive/Mastic: e.g., below carpet and floor tiles, under roofing materials, and under flashing; and

d. Rubber Window Gaskets: e.g., used in lieu of caulking to seal around windows in steel-framed buildings.

(k) “Priority Building Materials Screening Assessment Applicant Package” (Applicant Package) means a document package that includes an overview of the screening process, Applicant instructions, a process flow chart, a screening assessment form, and the Protocol for Evaluating Priority PCBs-Containing Materials before Building Demolition (BASMAA 2018, prepared for the Bay Area Stormwater Management Agencies Association, August 2018).

(l) “Regional Water Board” means the California Regional Water Quality Control Board, San Francisco Bay Region.

(m) “Remodel” means to make significant finish and/or structural changes that increase utility and appeal through complete replacement and/or expansion. A removed area reflects fundamental changes that include multiple alterations. These alterations may include some or all of the following: replacement of a major component (cabinet(s), bathtub, or bathroom tile), relocation of plumbing/gas fixtures/appliances, significant structural alterations (relocating walls, and/or the addition of square footage).

3-23-300. Applicability

This Article applies to Applicants for buildings constructed or remodeled from January 1, 1950 to December 31, 1980.

3-23-400. Exemptions

Applications for remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt.

3-23-500. PCBs in Priority Building Materials Screening Assessment

Every Applicant for a building demolition permit shall conduct a PCBs in Priority Building Materials Screening Assessment, a two-step process used to

- a. determine whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction (i.e., whether the building is an Applicable Structure); and if so
- b. demonstrate the presence or absence and concentration of PCBs in Priority Building Materials through existing information or representative sampling and chemical analysis of the Priority Building Materials in the building.

Applicants shall follow the directions provided in the PCBs in Priority Building Materials Screening Assessment Applicant Package (Applicant Package), which includes an overview of the process, Applicant instructions, a process flow chart, a screening assessment form, and the Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition. Per the Applicant Package, for certain types of buildings built within a specified date range, the Applicant must conduct further assessment to determine whether or not PCBs are present at concentrations ≥ 50 ppm. This determination shall be made via existing data on specific product formulations (if available), or via conducting representative sampling of the priority building materials and analyzing the samples for PCBs at a certified analytical laboratory. Any representative sampling and analysis must be conducted in accordance with the Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition. The Applicant Package shall provide all details.

3-23-600. Agency Notification, Abatement, and Disposal for Identified PCBs

When the PCBs in Priority Building Materials Screening Assessment identifies one or more Priority Building Materials with PCBs, the Applicant must comply with all related applicable federal and state laws, including potential notification of the appropriate regulatory agencies, including EPA, the Regional Water Board, and/or the DTSC. Agency contacts are provided in the Applicant Package. Additional sampling for and abatement of PCBs may be required. Depending on the approach for sampling and removing building materials containing PCBs, the Applicant shall notify or seek advance approval from USEPA before building demolition. Even in circumstances where advance notification to or approval from USEPA is not required before the demolition activity, the disposal of PCBs waste shall be regulated under the Toxic Substances Control Act (TSCA). Additionally, the disposal of PCBs waste shall be subject to California Code of Regulations (CCR) Title 22 Section 66262. Additional information shall be in the Applicant Package.

3-23-700. Compliance with California and Federal PCBs Laws and Regulations

Applicants must comply with all Federal and California laws and regulations, including but not limited to health, safety, and environmental laws and regulations, that relate to management and cleanup of any and all PCBs, including but not limited to PCBs in Priority Building Materials, other PCBs-contaminated materials, PCBs-contaminated liquids, and PCBs waste.

3-23-800. Information Submission and Applicant Certification

(a) The Applicant shall conduct a PCBs in Priority Building Materials Screening Assessment and submit the associated information and results as part of the building demolition permit application, including the following (see Applicant Package for more details):

1. Owner and project information, including location, year building was built, description of building construction type, and anticipated demolition date.
2. Determination of whether the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction.
3. If high priority for PCBs-containing building materials based on the structure age, use, and construction, the concentration of PCBs in each Priority Building Materials present. If PCBs concentrations are determined via representative sampling and analysis, include a contractor's report documenting the assessment which includes the completed QA/QC checklist from the Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition and the analytical laboratory results.
4. For each Priority Building Material present with a PCBs concentration equal to or greater than 50 ppm, the approximate amount (linear feet or square feet) of that material in the building (see Applicant Package for more details).
5. Applicant's certification of the accuracy of the information submitted.

(b) The Building Division of the Community Development Department shall specify a format or guidance for the submission of the information.

3-23-900. Recordkeeping

Applicants conducting a building demolition project must maintain documentation of the results of the PCBs in Priority Building Materials Screening Assessment for a minimum of five years after submittal.

3-23-1000. Obligation to Notify the City of San Leandro of Changes

The Applicant shall submit written notifications documenting any changes in the information submitted in compliance with this Article.

The Applicant shall submit the revised information to the Building Division of the Community Development Department when changes in project conditions affect the information submitted with the permit application.

3-23-1100. Liability

The Applicant is responsible for safely and legally complying with the requirements of this Article. Neither the issuance of a permit under the requirements of Chapter 7-5, Article 1, Section 105.1 *et seq.*, nor the compliance with the requirements of this Article or with any condition imposed by the issuing authority, shall relieve any person from responsibility for damage to persons or property resulting there from, or as otherwise imposed by law, nor impose any liability upon the City of San Leandro for damages to persons or property.

3-23-1200. Enforcement

Failure to submit the information required in this Article or submittal of false information will result in enforcement under Chapter 7-5, Article 1, Section 104.1 *et seq.*

3-23-1300. Fees

In addition to the fees required under Chapter 7-5, Article 1, Section 105.1 *et seq.*, all Applicants subject to this Article shall deposit funds with the City of San Leandro, pay a fee sufficient to reimburse the City of San Leandro's costs for staff time required to implement this Article (i.e., to compensate specifically for municipal staff time related to implementing a new program to manage PCBs-containing building materials during demolition in compliance with MRP Provision C.12.f., and not for any other purpose).

3-23-1400. City of San Leandro Projects

City of San Leandro departments shall comply with all the requirements of this Article.

SECTION 3. SEVERABILITY CLAUSE

If any section or provision of this Ordinance is to any extent invalid, illegal, or incapable of being enforced, such section or provision shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other sections or provisions hereof shall remain in full force and effect.

SECTION 4. Effective Date

Following adoption by a vote of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to San Leandro Municipal Code Title 1, Chapter 1-1, Article 3. The City Clerk shall certify as to the adoption of this Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for an against the same, in the Office of the City Clerk, in accordance with California Government Section 36933. This Ordinance is effective upon the expiration of the related Urgency Ordinance and replaces it on July 31, 2019.

Introduced by ___ and passed and adopted on this ___ by the following called vote:

Members of the Council:

AYES:

NOES:

EXCUSED:

ATTEST: