



Legislation Text

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Staff Report for the City of San Leandro City Council to Adopt a City of San Leandro City Council Urgency Ordinance to Immediately Enact Regulations Applicable to Polychlorinated Biphenyls (PCBs) During Building Demolition Projects and to Introduce For First Reading a City Of San Leandro City Council Ordinance to Enact Regulations Applicable to Polychlorinated Biphenyls (PCBs) During Building Demolition Projects

SUMMARY AND RECOMMENDATIONS

This item is for the City Council to adopt an Urgency Ordinance to give the City of San Leandro the necessary authority to ensure Polychlorinated Biphenyls (PCBs) do not enter municipal storm sewers systems (MS4s) from PCBs-containing materials in applicable structures at the time such structures are demolished.

This item also recommends that the City Council introduce for first reading an ordinance to regulate PCBs-containing materials in applicable structures at the time such structures are demolished to prevent PCBs from entering the municipal storm sewers system.

The passage of the urgency ordinance will ensure regulations are in effect on July 1, 2019 when the Municipal Regional Stormwater Permit that applies to the City requires such regulations be in effect. The regular ordinance, if it goes through the ordinary ordinance passage and publication process, would be effective 30 days after its second reading, which would be July 31, 2019.

The City of San Leandro is required by the Municipal Regional Stormwater Permit (MRP) to reduce PCBs discharges in stormwater runoff. Specifically, the City is required by MRP Provision C.12.f. to provide authority for and develop a new program to manage PCBs-containing building materials during demolition. Staff recommends that the City Council adopt an Urgency Ordinance to add "PCBs Management Requirements During Building Demolition" to become effective immediately. Adoption of an urgency ordinance and simultaneously an ordinary ordinance will put the regulations into effect without a lapse. This urgency ordinance will automatically terminate when the regular ordinance is effective, which would be July 31, 2019.

BACKGROUND

The purpose of this urgency ordinance is to implement urban water runoff requirements to reduce PCBs entering the water systems of the Bay. PCBs have been detected in elevated levels in certain fish within the San Francisco Bay. Some PCBs contain toxic compounds that are often carried into the Bay by rain and contaminated soil. The toxic compounds bioaccumulate in fat, which exposes animals and humans to these compounds through consumption of fish.

Urban stormwater runoff is considered a significant pathway for PCBs into the Bay. Targeting PCBs will address the contaminants entering the Bay through MS4s. Accordingly, regulatory agencies are

requiring San Francisco Bay Area municipalities to address sources of PCBs in stormwater runoff discharged to the Bay through MS4s. This regulation targets selected “Priority Building Materials” that may contain relatively high levels of PCBs, especially in buildings that were constructed or remodeled from January 1, 1950 to December 31, 1980.

During demolition, PCBs-containing building material in buildings may be released to the environment and transported to the Bay by stormwater runoff. The “Priority Building Materials” are caulking, thermal/fiberglass insulation, adhesive/mastic, and rubber window gaskets. These materials were identified in an initial review conducted to identify the full list of known PCBs-containing building materials. The materials were prioritized by developing a six factor list relating to the load or mass of PCBs contained in the materials, the likelihood that the materials would enter stormwater during the demolition process, and the relative difficulty of removing the materials from a building.

Water quality in the San Francisco Bay Region is regulated by the Regional Water Board. The Region encompasses portions of Alameda, Contra Costa, Marin, Napa, Santa Clara, San Francisco, San Mateo, Solano, and Sonoma Counties. The Regional Water Board developed Total Maximum Daily Loads (“TMDLs”), requiring a reduced amount of PCBs draining into the Bay. The PCBs TMDL estimates that 20 kilograms per year (kg/year) of PCBs enters the Bay in stormwater runoff, and requires this input be reduced to 2 kg/year, a 90% reduction.

In 2015 the Regional Water Board reissued the Municipal Regional Permit (MRP), a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from MS4s. The MRP contains provisions implementing the PCBs TMDL requirements regarding discharges of PCBs through stormwater into the Bay. This includes Provision C.12.f., which requires Permittees to provide authority to the Permittee to develop new programs and to manage PCBs-containing materials exposed to the environment during building demolition. Remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt. The MRP requires adoption of these new programs and implementation by July 1, 2019.

Analysis

The City of San Leandro (City) is required by the MRP to reduce PCBs discharges in stormwater runoff. This Urgency Ordinance targets Priority Building Materials that may contain relatively high levels of PCBs, specifically in buildings constructed or remodeled between 1950 and 1980. The Priority Building Materials are caulking, thermal/fiberglass insulation, adhesive/mastic, and rubber window gaskets. Staff recommends that these Priority Building Materials be regulated during building demolition to prevent the materials and associated PCBs from potentially being released into the environment and transported to the Bay by stormwater runoff.

This Urgency Ordinance requires the City to implement an assessment process for PCBs in building materials. It requires the City notify demolition permit applicants about the new requirement to conduct a PCBs in Priority Building Materials Screening Assessment. The PCBs in Priority Building Materials Screening Assessment is a two-step process to determine whether 1) the building proposed for demolition is high priority for PCBs-containing building materials based on the structure age, use, and construction type; and if so 2) demonstrate the presence or absence and concentration of PCBs in Priority Building Materials through existing information and/or representative sampling and chemical analysis. A building must first receive a determination on whether it is an applicable structure. It is anticipated that many projects will not involve the demolition of applicable structures.

Demolition permit applicants for projects that do not involve applicable structures will only need to address initial screening questions and certify the answers.

Applicants for building demolition permits should follow the directions in the PCBs in Priority Building Materials Screening Assessment Applicant Package (Applicant Package), provided by the Building Division of the Community Development Department upon an application for a demolition permit. The Applicant Package and screening assessment form will also be required as a Water Quality Control Program standard Condition of Approval through the plan review process. The Applicant Package contains 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 or remodeled between 1950 and 1980, the Applicant must conduct further assessment to determine whether or not PCBs are present at concentrations equal to or greater than 50 ppm. This determination is made with existing data if available, or by conducting representative sampling of the Priority Building Materials and analyzing the samples for PCBs at a certified laboratory. Any representative sampling and analysis must be conducted in accordance with the Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition. More details are contained in the Applicant Package.

When the Screening Assessment identifies one or more Priority Building Materials containing PCBs, the Applicant must comply with the relevant and applicable federal and state laws, including potential notification to the appropriate regulatory agencies such as the U.S. Environmental Protection Agency (USEPA), the Regional Water Board, and/or the State Department of Toxic Substances Control (DTSC). Agency contacts are provided in the Applicant Package. Additional sampling for and abatement of PCBs may be required. Depending on the method of sampling and removing building materials containing PCBs, the Applicant may need to 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 demolition, the disposal of PCBs waste is regulated under the Toxic Substances Control Act (TSCA). Additionally, the disposal of PCBs waste is subject to California Code of Regulations (CCR) Title 22 Section 66262. Additional information is provided in the Applicant Package.

The City's Building Division will act as the first point of contact, providing the Applicant Package, and it will receive, review, document, and maintain program compliance with the information received by the Applicant.

The focus of this regulation is to prevent PCBs runoff to protect water quality. The Urgency Ordinance does not:

- Ask for municipal oversight or enforcement of human health protection standards.
- Ask for municipal oversight of PCBs abatement or remediation of materials or lands contaminated by PCBs.
- Establish remediation standards.

At all demolition sites, routine construction controls, including erosion and sediment controls, should be implemented per the requirements of the MRP and the statewide Construction General Permit

issued by the California State Water Resources Control Board.

Legal Analysis

The City Attorney's Office drafted the Urgency Ordinance and related regular Ordinance with guidance from the Bay Area Stormwater Management Agencies Association model language.

Environmental Review

Adoption of the Urgency Ordinance is exempt from environmental review under California Environmental Quality Act (CEQA) exemption Section 15308, Actions by Regulatory Agencies for Protection of the Environment. This exemption provision applies to 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 as discussed above. No unacceptable negative impacts have been identified.

Fiscal Impacts

There would be a limited fiscal impact to the City due to adoption of this proposed program for managing PCBs in building materials during demolition. A limited amount of staff time will be required to provide application materials and to confirm that the application materials are completed prior to the issuance of a building demolition permit.

For projects that do involve demolition of an applicable structure, applicants will be required to screen priority building materials for PCBs and certify the results. Limited staff hours will be needed to review application materials to confirm that the applicant submitted all of the required information and that the information is consistent with the requirements of the program. The review would generally be limited to confirming that the PCBs in the Priority Building Materials Screening Assessment was conducted per the instructions in the Applicant Package.

Should staff find that implementation of these regulations requires a greater level of effort than currently anticipated, staff will bring forward recommendations for modifications to the City's Master Fee Schedule.

Due to the requirements of this regulation, applicants for demolition permits for applicable structures, including public projects implemented by the City, would incur additional costs. Some applicants would only incur costs for screening priority building materials for PCBs and certifying the results. Other applicants would incur higher costs for conducting additional activities, especially when materials with PCBs concentrations of ≥ 50 ppm are identified. The actual specific activities/resources required and associated costs will vary greatly depending on the project.

ATTACHMENT(S)

Attachment(s) to Staff Report

- *San Leandro PCBs Building Demolition Urgency Ordinance 2019-06-17*

- *San Leandro PCBs Building Demolition Regular Ordinance 2019-06-17*

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