



CONSENT CALENDAR

Agenda Item # 2

AGENDA REPORT SUMMARY

Meeting Date: May 14, 2019

Subject: Ordinance No. 2019-456: Managing PCBs During Building Demolition

Prepared by: Aida Fairman, Interim Engineering Services Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Ordinance No. 2019-456

Initiated by:

Staff; Municipal Regional Stormwater Permit requirements

Previous Council Consideration:

April 23, 2019

Fiscal Impact:

Negligible administrative costs associated with reviewing PCB screening assessments as part of building demolition permit review.

Environmental Review:

Adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) as an action taken by a regulatory agency to protect the environment (CEQA Guidelines Section 15308).

Policy Question(s) for Council Consideration:

None

Summary:

- The City's Municipal Regional Stormwater Permit (MRP) requires that the City adopt and begin implementation of a program to manage polychlorinated biphenyls (PCBs) in building materials by July 1, 2019
- Establish requirements for applicants for building demolition permits to conduct the following actions to manage building materials that potentially contain PCBs:
 - Conduct a screening assessment of PCBs in Priority Building Materials
 - When the assessment identifies one or more Priority Building Materials with PCBs, comply with all applicable federal and state laws, including potential notification of and reporting to appropriate regulatory agencies; additional sampling for and abatement of PCBs may be required
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Reviewed By:

City Manager

CJ

City Attorney

CD

Finance Director

SE



Subject: Ordinance No. 2019-456: Managing PCBs During Building Demolition

- Remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempted through the screening process

Staff Recommendation:

Adopt Ordinance No. 2019-456 amending Los Altos Municipal Code by adding Chapter 6.15 and establishing a program for assessing and managing PCBs-containing priority building materials during demolition projects in accordance with the Municipal Regional Stormwater Permit requirements



Subject: Ordinance No. 2019-456: Managing PCBs During Building Demolition

Purpose

Establish a program for assessing and managing PCBs-containing priority building materials during building demolition projects in accordance with MRP requirements.

Background

PCBs have been detected in elevated levels in certain sport fish in San Francisco Bay (Bay). Urban stormwater runoff is considered a significant pathway for PCBs into the Bay. Accordingly, regulatory agencies are requiring that Bay Area municipalities address sources of PCBs in stormwater runoff discharged to the Bay from municipal separate storm sewers systems (MS4s). This regulation targets selected priority building materials that may contain relatively high levels of PCBs, especially in buildings constructed or remodeled from January 1, 1950 to December 31, 1980. During demolition, these building materials and associated PCBs 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.

Water quality within the San Francisco Bay Region is regulated by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board). One way that the Regional Water Board protects water bodies within the San Francisco Bay Region is to develop Total Maximum Daily Loads (TMDLs), which are programs to restore water quality in water bodies impaired by pollutants such as PCBs. Currently there is a TMDL established for PCBs in the Bay. To achieve the goals of the TMDL, a reduction in the amount of inputs of PCBs to the Bay is required. The PCBs TMDL estimates that 20 kilograms per year (kg/year) of PCBs enters the Bay in stormwater runoff, and requires that this input be reduced to 2 kg/year by 2030, a 90% reduction.

In 2015, the Regional Water Board reissued the MRP,¹ a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from MS4s. The MRP includes provisions to reduce discharges of PCBs in stormwater runoff to the Bay. These include Provision C.12.f, which requires Permittees to develop new programs to manage PCBs-containing building materials during demolition. Remodeling, partial building, wood framed structure, and single-family residence demolition projects are exempt. The MRP requires that Permittees adopt and implement these new programs by July 1, 2019.

Discussion/Analysis

The new PCBs requirement is analogous to the process currently implemented for asbestos-containing materials. It requires that the City of Los Altos initially notify demolition permit applicants about the new requirements to conduct a PCBs in Priority Building Materials Screening Assessment. This screening assessment is a two-step process used to: 1) determine whether the building proposed for demolition is high priority for PCBs-containing building materials based on the building age, use,

¹ Order No. R2-2015-0049



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and construction type; and if so 2) demonstrate the absence or presence and concentration of PCBs in Priority Building Materials through existing information or representative sampling and chemical analysis of the Priority Building Materials.

The first step of the screening assessment determines whether or not the building is an *applicable structure*.² It is anticipated that most projects in Los Altos will not involve the demolition of *applicable structures*. Demolition permit applicants for projects that don't involve *applicable structures* will only need to address the initial screening questions and certify the answers.

Applicants shall follow the directions provided in the *PCBs in Priority Building Materials Screening Assessment Applicant Package* (Applicant Package) (BASMAA 2018). Per the Applicant Package, for certain types of buildings built between 1950 and 1980, the Applicant must conduct further assessment to determine whether or not PCBs are present at concentrations ≥ 50 ppm,³ which may include sampling and analysis by a certified laboratory.

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 the United States Environmental Protection Agency (EPA), the Regional Water Board, and/or the California 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 approach for 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 the demolition activity, 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 focus of this regulation is on PCBs runoff prevention to protect water quality. The regulation 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.

² *Applicable structures* are defined as structures built or remodeled from January 1, 1950 to December 1, 1980, with remodeling, partial building, wood framed structure, and single-family residence demolition projects being exempt.

³ MRP Provision C.12.f states: "Permittees shall develop and implement or cause to be developed and implemented an effective protocol for managing materials with PCBs concentrations of 50 ppm or greater in applicable structures at the time such structures undergo demolition so that PCBs do not enter MS4s."



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At all demolition sites, routine construction controls (including erosion and sediment controls) should also be implemented per the requirements of the MRP and the statewide Construction General Permit issued by the California State Water Resources Control Board.

Options

- 1) Adopt Ordinance No. 2019-456 amending Los Altos Municipal Code by adding Chapter 6.15 to establish a program for assessing and managing PCBs-containing priority building materials during demolition projects in accordance with MRP requirements

Advantages: Establishes direct legal authority for implementing a PCBs management program required by the MRP

Disadvantages: None – ordinance is an MRP requirement

- 2) Do not approve changes to the City Municipal Code

Advantages: None

Disadvantages: Failure to implement PCBs management program by July 1, 2019 would be non-compliant with MRP requirements, or PCBs program establishment would rely on indirect legal authority through the existing Municipal Code

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2019-456

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LOS ALTOS AMENDING THE LOS ALTOS MUNICIPAL CODE
BY ADDING A NEW CHAPTER 6.15 ENTITLED “MANAGING
POLYCHLORINATED BIPHENYLS (PCBS) IN PRIORITY
BUILDING MATERIALS DURING THE DEMOLITION OF
CERTAIN BUILDINGS”**

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 storm drain systems and other discharges is considered a significant pathway for PCBs into the Bay; and

WHEREAS, PCBs in caulk and other priority building materials that were used in building construction and remodeling projects between 1950 and 1980 have been found to have particularly high PCBs concentrations; and

WHEREAS, during demolition these building materials may be released to the environment and transported to receiving waters by stormwater runoff; and

WHEREAS, the San Francisco Bay Regional Water Quality Control Board adopted on November 19, 2015 the reissued Municipal Regional Permit (MRP), a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from municipal separate storm sewers systems (MS4s); and

WHEREAS, the MRP includes provisions that implement the requirements in the PCBs Total Maximum Daily Load (TMDL), a program to address the Bay’s impairment by PCBs; and

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

WHEREAS, the MRP, Provision C.12.f., requires the Permittees, including the City of Los Altos, to develop and implement new programs to manage PCB-containing building materials during demolition activities; and

WHEREAS, more specifically, the MRP requires the Permittees to require buildings that were built or remodeled during the period from January 1, 1950 to December 31, 1980 be screened for the presence of PCBs in priority building materials prior to demolition and include a method for ensuring that PCBs are not discharged to the storm drain from demolition of applicable structures; and

WHEREAS, applicable structures include, at a minimum, commercial, public, institutional and industrial structures constructed or remodeled between the years 1950 and 1980 with building materials with PCBs concentrations of 50 ppm or greater; and

WHEREAS, remodeling projects, partial building demolitions, and demolitions of wood framed structures, and single-family residences are exempt from the requirement to screen for the presence of PCBs in priority building materials; and

WHEREAS, the MRP requires that these new programs be adopted by June 30, 2019 and implemented by July 1, 2019; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15308 of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended because it is an action taken to implement Municipal Regional Stormwater Permit to assure the maintenance, restoration, enhancement or protection of the water quality from PCB-containing materials during building demolition activities where the regulatory process includes procedures for the protection of the environment.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE. Los Altos Municipal Code is hereby amended by adding to Title 6 a new Chapter 6.15 entitled “Managing Polychlorinated Biphenyls (PCBs) in Building Materials during the Demolition of Certain Buildings.”

CHAPTER 6.15 - MANAGING POLYCHLORINATED BIPHENYLS (PCBS) IN PRIORITY BUILDING MATERIALS DURING THE DEMOLITION OF CERTAIN BUILDINGS

6.15.010 – Purpose.

The provisions of this Chapter shall be construed to accomplish the following purposes:

- A. 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 or square feet) of that material in the building.
- B. 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 (US 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.
- C. 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.

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.

6.15.020 – Definitions.

- A. “Applicable Structure” means buildings constructed or remodeled from January 1, 1950 to December 31, 1980 unless exempt pursuant to Section 6.15.040.
- B. “Applicant” means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, who applies to the city for a building permit to undertake any demolition project as required by Chapter 12.08 of the City of Los Altos Municipal Code.
- C. “Building Department” means the Building Department of the City of Los Altos.
- 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” or “US 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 Priority Building Materials Screening Assessment Applicant Package.
- J. “PCBs in Priority Building Materials Screening Assessment Applicant Package” or “Applicant Package” means the document package prepared and approved by the Bay Area Stormwater Management Agencies Association (BASMAA), August 2018, as may be amended, 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..
- K. “Priority Building Materials” means the following:
 - 1. Caulking: e.g., around windows and doors, at structure/walkway interfaces, and in expansion joints;
 - 2. Thermal/Fiberglass Insulation: e.g., around HVAC systems, around heaters, around boilers, around heated transfer piping, and inside walls or crawls spaces;
 - 3. Adhesive/Mastic: e.g., below carpet and floor tiles, under roofing materials, and under flashing; and
 - 4. Rubber Window Gaskets: e.g., used in-lieu of caulking to seal around windows in steel-framed buildings.
- 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).

Section 6.15.030 – Applicability.

This Chapter applies to the demolition of buildings constructed or remodeled from January 1, 1950 to December 31, 1980 (Applicable Structures). Applicable Structures include, at a minimum, commercial, multi-family residential, public, institutional, and industrial buildings.

Section 6.15.040 – Exemptions.

Applications for remodeling, partial building demolition, wood framed structures, and single-family residence demolition projects shall not be deemed an Applicable Structure.

Section 6.15.050 – PCBs in Priority Building Materials Screening Assessment and Applicant Certification.

- A. An Applicant for a building demolition permit 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 an Applicable Structure based on the structure age, use, and construction.
 3. If the project involves an Applicable Structure, indicate the concentration of PCBs in each Priority Building Material present. Demonstrate the presence or absence and concentration of PCBs in Priority Building Materials through existing information on specific product formulations (if available) or representative sampling and chemical analysis of the Priority Building Materials in the building by a certified analytical laboratory. If PCBs concentrations are determined via representative sampling and analysis, the Applicant shall 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 reports.
 4. For each Priority Building Material present with a PCBs concentration equal to or greater than 50 ppm, the approximate amount (linear or square feet) of that material in the building.
 5. Applicant’s certification of the accuracy of the information submitted.

- B. Applicants shall follow the directions provided in the PCBs in Priority Building Materials Screening Assessment Applicant Package (Applicant Package). Any representative sampling and analysis must be conducted in accordance with the *Protocol for Assessing Priority PCBs-Containing Materials before Building Demolition* included in the Applicant Package.
- C. The City Manager, or his or her designee, may specify a format or guidance for the submission of the information.
- D. Failure to submit complete information required by this Section may cause the building demolition permit application and submittal documents to be deemed incomplete.

Section 6.15.060 – 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 in excess of regulatory limits, the Applicant must comply with all applicable federal and state laws that relate to management and cleanup of PCBs, including but not limited to PCBs in Priority Building Materials, other PCBs-contaminated materials, PCBs-contaminated liquids, and PCBs waste, and which may require notification of the appropriate regulatory agencies, including US EPA, the Regional Water Board, and/or the DTSC.

Section 6.15.070 – 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.

Section 6.15.080 – Obligation to Notify City of Los Altos of Changes.

The Applicant shall submit to the Building Department written notifications documenting any changes in the information submitted with the permit application pursuant to Section 6.15.050.

Section 6.15.090 – Liability.

The Applicant is responsible for safely and legally complying with the requirements related to management and cleanup of PCBs. Neither the issuance of a building permit under Chapter 12.08, nor the compliance with the requirements of this Chapter, shall relieve any person from responsibility for damage to persons or property resulting therefrom, or as otherwise imposed by law, nor impose any liability upon the City of Los Altos for damages to persons or property.

Section 6.15.100 – Enforcement.

Failure to submit the information required in this Chapter or submittal of false information may be enforced by administrative citation and order under Chapter 1.30.

Section 6.15.130 – City Projects

City departments shall comply with all the requirements of this Chapter except they shall not be required to obtain permits and approvals under this Chapter for work performed within City owned properties and areas, such as rights-of-way.

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2019 and was thereafter, at a regular meeting held on _____, 2019 passed and adopted by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Lynette Lee Eng, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK