

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.

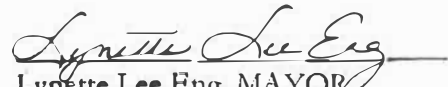
SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

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 April 23, 2019 and was thereafter, at a regular meeting held on May 14, 2019 passed and adopted by the following vote:

AYES: BRUINS, ENANDER, FLIGOR, LEE ENG, PEPPER
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE


Lynette Lee Eng, MAYOR

Attest:


Jon Maginot, CMC, CITY CLERK



STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA) CERTIFIED COPY OF ORDINANCE
CITY OF LOS ALTOS) SECOND READING/ADOPTION

I, Jon Maginot, City Clerk for the City of Los Altos in said County of Santa Clara, and State of California, do hereby certify that the attached is a true and correct copy of Ordinance No. 2019-456, adopted by the Los Altos City Council on May 14, 2019 by the following vote:

AYES: BRUINS, ENANDER, FLIGOR, LEE ENG, PEPPER
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE

I hereby further certify that a summary of the ordinance was published in accordance with Government Code Section 36933 on the following dates: May 8, 2019 and May 29, 2019. Said ordinance shall be effective June 14, 2019.

Dated this 3 day of July, 2019.


Jon Maginot, CMC
City Clerk