



# City of San Leandro

Meeting Date: June 17, 2019

## Staff Report

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**File Number:** 19-360 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.K.

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** City Attorney and  
Rich Pio Roda  
City Attorney

**FINANCE REVIEW:** Not Applicable

**TITLE:** 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

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### 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  $\geq 50$  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*

### **PREPARED BY:**

Amanda Cusick, Deputy City Attorney, and Richard D. Pio Roda, City Attorney

**IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO**

**ORDINANCE NO. 2019-\_\_**

**AN URGENCY ORDINANCE OF THE CITY OF SAN LEANDRO ADDING REGULATIONS TO MANAGE PCBs DURING BUILDING DEMOLITION PROJECTS TO BECOME EFFECTIVE IMMEDIATELY**

The City Council of the City of San Leandro does **ORDAIN** as follows:

**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**, in 2015 the San Francisco Bay Regional Water Quality Control Board adopted 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 the 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 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 the implement the 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 of the Community Development Department to develop, implement, and promulgate temporary regulations and procedures to create and manage the program, including conditions of approval, demolition permit requirements, and related forms; and

**NOW, THEREFORE**, the City Council of the City of San Leandro does ordain as follows:

- Section 1. Purpose**
- Section 2. Definitions**
- Section 3. Applicability**
- Section 4. Exemptions**
- Section 5. PCBs in Priority Building Materials Screening Assessment**
- Section 6. Agency Notification, Abatement, and Disposal for Identified PCBs**
- Section 7. Compliance with California and Federal PCBs Laws and Regulations**
- Section 8. Information Submission and Applicant Certification**
- Section 9. Recordkeeping**
- Section 10. Obligation to Notify the City of San Leandro of Changes**
- Section 11. Liability**
- Section 12. Enforcement**
- Section 13. Fees**
- Section 14. City of San Leandro Projects**
- Section 15. Effective Date**

**Section 1. Purpose**

(a) The provisions of this Article shall be construed to accomplish the following purposes, which as stated ordained herein, are required to preserve public health, safety, and welfare, specifically to prevent further contamination of the San Francisco Bay.

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.

## **Section 2. 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 construction 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 from 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).

### **Section 3. Applicability**

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

### **Section 4. Exemptions**

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

### **Section 5. 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  $\geq 50$  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 additional details.

#### **Section 6. 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 remain regulated under Toxic Substances Control Act (TSCA). Additionally, the disposal of PCBs waste shall remain subject to California Code of Regulations (CCR) Title 22 Section 66262. Additional information shall be in the Applicant Package.

#### **Section 7. 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.

#### **Section 8. 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 may specify a format or guidance for the submission of the information.

### **Section 9. Recordkeeping**

Those 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 10. 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.

### **Section 11. 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.

### **Section 12. 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.*

### **Section 13. 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).

**Section 14. City of San Leandro Projects**

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

**Section 15. Effective Date**

Following adoption by a four-fifths vote of the City Council, this Ordinance shall be effective immediately upon adoption. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for an against the same, in the Office of the City Clerk, in accordance with California Government Section 36933. This Urgency Ordinance expires when the ordinary Ordinance is effective, or on July 31, 2019, whichever is later.

**Section 16. Severability**

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.

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

Members of the Council:

AYES:

NOES:

EXCUSED:

ATTEST:

**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  $\geq 50$  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:

3232002.1



# City of San Leandro

Meeting Date: June 17, 2019

## Urgency Ordinance

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**File Number:** 19-366

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:**

**FINANCE REVIEW:** Not Applicable

**TITLE:** URGENCY ORDINANCE of the City of San Leandro City Council Adding Regulations to Manage Polychlorinated Biphenyls (PCBs) During Building Demolition Projects to Become Effective Immediately

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The City Council of the City of San Leandro does **ORDAIN** as follows:

**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**, in 2015 the San Francisco Bay Regional Water Quality Control Board adopted 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 the 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 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 implement the 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 of the Community Development Department to develop, implement, and promulgate temporary regulations and procedures to create and manage the program, including conditions of approval, demolition permit requirements, and related forms.

**NOW, THEREFORE**, the City Council of the City of San Leandro does ordain as follows:

- Section 1. Purpose**
- Section 2. Definitions**
- Section 3. Applicability**
- Section 4. Exemptions**
- Section 5. PCBs in Priority Building Materials Screening Assessment**
- Section 6. Agency Notification, Abatement, and Disposal for Identified PCBs**
- Section 7. Compliance with California and Federal PCBs Laws and Regulations**
- Section 8. Information Submission and Applicant Certification**
- Section 9. Recordkeeping**
- Section 10. Obligation to Notify the City of San Leandro of Changes**
- Section 11. Liability**
- Section 12. Enforcement**
- Section 13. Fees**
- Section 14. City of San Leandro Projects**
- Section 15. Effective Date**
- Section 1. Purpose**

(a) The provisions of this Article shall be construed to accomplish the following purposes, which as stated and ordained herein, are required to preserve public health, safety, and welfare, specifically to prevent further contamination of the San Francisco Bay.

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.

**Section 2. Definitions**

In addition to the general definitions applicable to the Municipal 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 not falling within the timeframe herein 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, or significant structural alterations (relocating walls, and/or the

addition of square footage).

**Section 3. Applicability**

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

**Section 4. Exemptions**

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

**Section 5. 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  $\geq 50$  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 additional details.

**Section 6. 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 remain regulated under the Toxic Substances Control Act (TSCA). Additionally, the disposal of PCBs waste shall remain subject to California Code of Regulations (CCR) Title 22 Section 66262. Additional information shall be in the Applicant Package.

**Section 7. 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.

**Section 8. 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 may specify a format or guidance for the submission of the information.

**Section 9. Recordkeeping**

Those 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 10. 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.

**Section 11. 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 therefrom, or as otherwise imposed by law, nor impose any liability upon the City of San Leandro for damages to persons or property.

**Section 12. 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.*

**Section 13. 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 to 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).

**Section 14. City of San Leandro Projects**



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

**Section 15. Effective Date**

Following adoption by a four-fifths vote of the City Council, this Ordinance shall be effective immediately upon adoption. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Section 36933. This Urgency Ordinance expires when the ordinary Ordinance is effective, or on July 31, 2019, whichever is later.

**Section 16. Severability**

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.



# City of San Leandro

Meeting Date: June 17, 2019

## Ordinance

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**File Number:** 19-367 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:**

**FINANCE REVIEW:** Not Applicable

**TITLE:** ORDINANCE of the City of San Leandro to Enact Regulations Applicable to Polychlorinated Biphenyls (PCBs) Adding Chapter 23 to Title 3 of the City of San Leandro Municipal Code (Management of PCBs During Building Demolition Projects)

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The City Council of the City of San Leandro does **ORDAIN** as follows:

### **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 to 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  $\geq 50$  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 therefrom, 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 and 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.