



City of Palo Alto

City Council Staff Report

(ID # 10402)

Report Type: Consent Calendar

Meeting Date: 6/3/2019

Council Priority: Climate/Sustainability and Climate Action Plan

Summary Title: Adoption of Ordinance to Amend Title 16 (PCBs in Building Materials During Demolitions)

Title: SECOND READING: Adoption of an Ordinance Amending Title 16 (Building Regulations) of the Palo Alto Municipal Code to Require Management of PCBs During Building Demolition in Compliance With the Municipal Regional Stormwater Permit (FIRST READING: May 20, 2019 PASSED 7-0)

From: City Manager

Lead Department: Public Works

This ordinance was first heard by the City Council on May 20, 2019, where it passed 7-0 with no changes. It is now before the Council for second reading.

Attachments:

- Attachment A: ORD Regulating PCBs to Implement Stormwater MRP Requirement - Amending PAMC Chapter 16.11 to Add (KRV FINAL Edits)

Not Yet Adopted

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto
Amending Chapter 16.11 of Title 16 of the Palo Alto Municipal Code to Add
Regulations for Management of Polychlorinated Biphenyls (PCBs) During
Demolition to Implement Stormwater Management and Pollution Prevention
Measures in Compliance With the Municipal Regional Stormwater Permit

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. Elevated levels of PCBs have been detected in fish in the San Francisco Bay, making them less safe for consumption.

B. Urban stormwater runoff is considered a significant pathway for PCBs into the Bay, and the San Francisco Bay Regional Water Quality Board (“Regional Water Board”), through the Municipal Regional Stormwater Permit (MRP) now in effect, has required Bay Area municipalities to address sources of PCBs in stormwater runoff discharged to the Bay from municipal separate storm sewers (referred to as “MS4s” or “storm drain systems”).

C. The MRP requires that permittees, including the City of Palo Alto, adopt an effective protocol and implement a program focused on the demolition of buildings likely to contain building materials with relatively high levels of PCBs. Under the MRP, the program must be implemented by July 1, 2019.

D. Consistent with the MRP and a screening protocol resulting from a coordinated regional effort to implement this MRP requirement, the regulations established by this Ordinance focus on projects that involve the demolition of an entire building constructed or remodeled between January 1, 1950 and December 31, 1980 (except single-family homes, two-family homes, and wood-framed structures), as projects that are high priority for PCBs-containing building materials based on structure age, use, and construction.

SECTION 2. Chapter 16.11 of Title 16 is hereby amended to add a new Section 16.11.060 to read as follows:

16.11.060 Management of PCBs During Building Demolition.

(a) **Purpose and Intent.** The purpose of this Section is to establish regulations related to the management of building materials containing polychlorinated biphenyls (PCBs) during building demolition activities in order to reduce the discharge of PCBs into the San Francisco Bay through stormwater runoff. This Section implements the requirements of the

municipal regional stormwater permit (MRP) issued by the San Francisco Bay Regional Water Quality Board applicable to the City.

(b) Definitions. For the purposes of this Section, the following terms shall have the following meaning.

1. "Covered project" means a project that involves the demolition of an entire building constructed or remodeled between January 1, 1950 and December 31, 1980, inclusive. A covered project does not include a single-family residence, two-family residence or any wood-framed structure.
2. "PCBs" means polychlorinated biphenyls.
3. "PCB Assessment Applicant Package" means a document package approved by the Director of Public Works and provided by the City that includes an overview of the screening process, applicant instructions, a process flow chart, a screening assessment form, and a protocol for assessing Priority Building Materials before building demolition.
4. "Priority Building Materials" means the following:
 - (i) Caulking (i.e., around windows and doors, at structure/walkway interfaces, in expansion joints);
 - (ii) Thermal or fiberglass insulation (i.e., around HVAC systems, boilers, or heating transfer piping, and inside walls or crawl spaces);
 - (iii) Adhesive/mastic (i.e., below carpet and floor tiles, under roofing materials, under flashing); and
 - (iv) Rubber window gaskets (i.e., used in lieu of caulking to seal around windows in steel-framed buildings).

(c) Screening Assessment Requirement. Any person undertaking a project that involves the demolition of an entire building shall submit a complete screening assessment for PCBs in Priority Building Materials with the building demolition permit application. The screening assessment shall be completed in compliance with the PCB Assessment Applicant Package, in a form approved by the Director, and shall provide information documenting the results of the screening, including:

1. Owner and project information, including location, year building was constructed and remodeled (if applicable), description of building construction type and use, and anticipated demolition date.

2. Determination of whether the project is a covered project.
3. If the project is a covered project, the concentration of PCBs in each Priority Building Material present in the building or buildings proposed for demolition. If PCBs concentrations are determined through representative sampling and analysis, the applicant shall include a contractor's report documenting the assessment 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 feet or square feet) of that material in the building.
5. Applicant's certification of the accuracy of the information submitted.

(d) Agency Notification, Abatement, and Disposal of Identified PCBs.

1. Applicant shall comply with the requirements set forth in the PCB Assessment Applicant Package including, but not limited to, requirements regarding the notification of other regulatory agencies, as applicable, prior to building demolition.
2. Applicant shall determine if additional agency notification or approvals, or additional sampling for and abatement of PCBs, is required under other applicable law. Applicant shall comply with all Federal and State 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. The requirements of this Section do not replace or supplant the requirements of State 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.

(f) Obligation to Notify City of Changes. Applicants shall submit written notifications documenting any changes in the information submitted in compliance with this Section to the Director when changes in project conditions affect the information submitted with the permit application.

(e) Recordkeeping. Applicants shall maintain documentation of the results of the Priority Building Materials Screening Assessment for a minimum of five years after submittal to the City.

(f) Liability. Applicant is responsible for safely and legally complying with the requirements of this Section. Neither the issuance of a permit under the requirements of the Director or Building Department, nor the compliance with the requirements of this Section or with any condition imposed by the City, 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 for damages to persons or property.

SECTION 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. The Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”), pursuant to CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. This exemption 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. The Ordinance is also exempt from CEQA pursuant to Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

//

//

//

//

//

//

//

//

//

//

//

SECTION 5. This Ordinance shall be effective on the thirty-first day after the date of its adoption. This Ordinance shall not apply to any project for which a complete building demolition permit application has been submitted as of the effective date of the Ordinance.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Public Works