



STAFF REPORT

AGENDA NO: 9b

MEETING DATE: April 15, 2019

To: Honorable Mayor and City Council

Date: April 15, 2019

**From: Syed Murtuza, Public Works Director – (650) 558-7230
Kathleen Kane, City Attorney – (650) 558-7204**

Subject: Public Hearing to Introduce an Ordinance Adding Chapter 15.15 of the Burlingame Municipal Code to Establish Management of Polychlorinated Biphenyls During Building Demolition Projects

RECOMMENDATION

Staff recommends that the City Council conduct a Public Hearing to introduce the attached ordinance amending Chapter 15.15 of the Burlingame Municipal Code (BMC) to establish a program to manage Polychlorinated Biphenyls (PCBs) during building demolition projects by:

1. Requesting the City Clerk read the title of the attached ordinance.
2. By motion, waiving further reading and introducing the proposed ordinance.
3. Conducting a public hearing on the proposed ordinance.
4. Discussing the proposed ordinance and determining whether to bring it back for second reading and adoption.
5. Directing the City Clerk to publish a summary of the ordinance at least five days before its proposed adoption.

BACKGROUND

PCBs are highly toxic industrial compounds that pose serious health risks to humans, even in small amounts. Although PCBs were banned from manufacture in the United States in 1979, they are slow to break down and can persist in the environment at dangerous levels. PCBs have been observed in elevated levels in certain fish in the San Francisco Bay, which contributes to health risks to people who frequently eat contaminated fish. To make the fish safer to eat, sources of PCBs entering the Bay need to be identified and controlled. Urban stormwater runoff, airborne releases, and soil erosion are all pathways for PCBs to enter the Bay. Accordingly, the San Francisco Bay Regional Water Quality Control Board (Water Board), which regulates water quality in the San Francisco Bay, is requiring that Bay Area municipalities develop and implement a protocol for managing materials with PCBs in applicable structures at the time such structures undergo demolition so that PCBs do not enter the storm drain system. Applicable structures include commercial, public, institutional, and industrial structures constructed or remodeled from January 1, 1950 to December 31, 1980 with building materials that contain PCB concentrations of 50 parts per million (ppm) or greater. Single-family residential buildings and wood frame structures are

exempt. Local agencies are required to develop the protocols for PCBs by June 30, 2019 and include each of the following components, at a minimum:

1. Authority to ensure that PCBs do not enter the municipal storm drain systems from PCB-containing materials in applicable structures at the time such structures undergo demolition;
2. Method for identifying applicable structures prior to their demolition; and
3. Method(s) for ensuring PCBs are not discharged to the storm drain from demolition of applicable structures.

DISCUSSION

The City of Burlingame is a member of the Bay Area Stormwater Management Agencies Association (BASMAA). As such, staff has been collaborating with BASMAA agencies over the last year to develop a unified and consistent approach to comply with the Water Board regulations with regards to the PCBs Building Demolition Program. The BASMAA includes all the cities in Alameda, Contra Costa, Santa Clara, and San Mateo counties. The PCBs Building Demolition Program will focus on requiring sampling, prior to demolition, for these four building materials: caulks and sealants, thermal/fiberglass insulation and other insulating materials, adhesive/mastic, and rubber window seals/gaskets. These materials were identified from scientific research on known PCB-containing building materials and their concentrations.

Sampling will be a requirement for applicable structures, including commercial, public, institutional, and industrial structures constructed or remodeled between January 1, 1950 and December 31, 1980. Single-family homes and wood-frame structures will be exempt. If PCBs are found to be greater than or equal to 50 ppm in any of the building materials, applicants will be required to follow all applicable federal and state requirements for notification and abatement prior to demolition, similar to abatement requirements for asbestos. This may include reporting to the U.S. Environmental Protection Agency and/or the Water Board.

Process for Implementing the Ordinance:

- Building permit applicant submits an application for a project that involves demolition.
- City of Burlingame staff will notify building permit applicant about the requirements of this ordinance including submittal of the PCBs Screening Assessment Form.
- Applicant will complete the PCBs Screening Assessment Form, and determine whether or not the building is an applicable structure. If there are no applicable structures, applicant will only need to complete the initial screening questions and certify their response. (Note: It is anticipated that the majority of demolition projects have non-applicable structures.)
- If the building is an applicable structure, the applicant must conduct further assessment to determine whether or not PCBs are present at concentrations greater than or equal to 50 ppm. This determination is made through existing data on specific product formulations (if available), or more likely, by conducting representative sampling of building materials and having the samples analyzed for PCBs at a certified analytical laboratory.
- If the sampling result identifies one or more building materials with elevated PCBs, the applicant must comply with all applicable federal and state laws, including notification of regulatory agencies, including the U.S. Environmental Protection Agency (USEPA), the Water Board,

and/or the California Department of Toxic Substances Control. Additional sampling and abatement of PCBs may be required. Depending on the approach for sampling and removing building materials containing PCBs, the applicant may need to notify or seek advance approval from USEPA before building demolition. Even in circumstances where advance notification to or approval from USEPA is not required before the demolition activity, the disposal of PCB waste is regulated under the Toxic Substances Control Act and is subject to the California Code of Regulations, Title 22, Section 66262.

The focus of this regulation is to protect water quality by preventing PCBs from entering stormwater runoff. The regulation does not:

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

In order to educate the public and the construction community about the upcoming requirements for PCB abatement, staff held a public workshop on April 6, 2019 at the Main Library. Staff conducted extensive targeted notification to prospective builders, contractors, and applicants through the City's eNews and direct mailing regarding the workshop. Additionally, staff plans to make the outreach and education materials available through the City website.

FISCAL IMPACT

Because single-family residential buildings and wood frame structures are exempt, it is anticipated that the majority of demolition projects will not involve applicable structures. Staff will review applications of applicable structures and certify the results. It is estimated that an average of two hours of staff time will be required to review and approve these applications, which can be absorbed in the current budget.

Exhibits:

- Proposed Ordinance
- PCBs Demolition Program Applicant Package