

ORDINANCE NO. 1428

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY
ADDING CHAPTER 15.70 RE: MANAGEMENT OF PCBs DURING
BUILDING DEMOLITION PROJECTS

WHEREAS, polychlorinated biphenyls (PCBs) have been detected in elevated levels in fish and sediment in the San Francisco Bay making fish unsafe to eat; and

WHEREAS, urban runoff through storm drain systems and other discharges is considered a significant pathway for PCBs into the San Francisco Bay; and

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

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

WHEREAS, the San Francisco Bay Regional Water Quality Control Board adopted on November 19, 2015 the reissued Municipal Regional Permit (MRP), a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from municipal separate sewer systems. The MRP includes provisions that implement the requirements in the PCBs Total Maximum Daily Load (TMDL), a program to address the Bay's impairment by PCBs; and

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

WHEREAS, the MRP requires the permittees, including the City of Daly City, to develop and implement new programs to manage PCBs-containing building materials during demolition; and

WHEREAS, more specifically, the MRP requires the permittees to require that demolition permits for buildings that were built or remodeled during the period from January 1, 1950 to December 31, 1980 be screened for the presence of PCBs in priority building materials; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DALY CITY DOES
ORDAIN AS FOLLOWS:

SECTION 1: Chapter 15.70 of Title 8 of the Municipal Code is hereafter added to read as follows:

MANAGEMENT OF PCBs DURING BUILDING DEMOLITION PROJECTS

- 15.70.010 Management of PCBs During Building Demolition Projects – Adopted**
- 15.70.020 Purpose**
- 15.70.030 Definitions**
- 15.70.040 Applicability**
- 15.70.050 Exemptions**
- 15.70.060 PCBs in Priority Building Materials Screening Assessment**
- 15.70.070 Agency Notification, Abatement, and Disposal for Identified PCBs**
- 15.70.080 Compliance with California and Federal PCBs Laws and Regulations**
- 15.70.090 Information Submission and Applicant Certification**
- 15.70.110 Recordkeeping**
- 15.70.110 Obligation to Notify City of Daly City of Changes**
- 15.70.120 Liability**
- 15.70.130 Enforcement**
- 15.70.140 Fees**
- 15.70.160 Effective Date**

15.70.010. Management of PCBs During Building Demolition Projects – Adopted.

15.70.020 - 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.

15.70.030. 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 Daly City Municipal Code 15.28, Moving or Demolition of Buildings 15.28.010.
- (c) “**Appropriate Authority**” means the Authority Having Jurisdiction which is the City of Daly City.
- (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:
 1. Caulking: e.g., around windows and doors, at structure/walkway interfaces, and in expansion joints;

2. Thermal/Fiberglass Insulation: e.g., around HVAC systems, around heaters, around boilers, around heated transfer piping, and inside walls or crawls spaces;
 3. Adhesive/Mastic: e.g., below carpet and floor tiles, under roofing materials, and under flashing; and
 4. Rubber Window Gaskets: e.g., used in lieu of caulking to seal around windows in steel-framed buildings.
- (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).

15.70.040. Applicability

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

15.70.050. Exemptions

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

15.70.060. 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 ≥ 50 ppm. This determination is made via existing data on specific product formulations (if available), or more likely, 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 provides additional details.

15.70.070. 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 may need to notify or seek advance approval from USEPA before building demolition.

Even in circumstances where advance notification to or approval from USEPA is not required before the demolition activity, the disposal of PCBs waste is regulated under 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.

15.70.080. 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.

15.70.090. 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. 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 Material 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 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 (see Applicant Package for more details).
 5. Applicant's certification of the accuracy of the information submitted.
- (b) The [Director of Public Works, Community Development, or Environmental Services, or other Appropriate Authority] may specify a format or guidance for the submission of the information.

15.70.100. 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.

15.70.110. Obligation to Notify City of Daly City 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 City of Daly City when changes in project conditions affect the information submitted with the permit application.

15.70.120. 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 Daly City Municipal Code 15.28.010, 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 Daly City for damages to persons or property.

15.70.130. Enforcement

Failure to submit the information required in this Article or submittal of false information will result in enforcement under Daly City Municipal Chapter 1.12 General Penalty

15.70.140. Fees

In addition to the fees required under Daly City Municipal Code Sections 15.00.020 Fees prescribed and established by resolution of the City Council for demolition of buildings and

Applicants subject to this Article shall deposit funds “sufficient to reimburse City of Daly City 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)”.

15.70.150. City or County Projects

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

15.70.160. Effective Date

This ordinance shall become effective on July 1, 2019.

SECTION 2: Severability. If any provision of this Ordinance is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision thereof which had previously been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding.

SECTION 3: Environmental Determination. The City Council of the City of Daly City finds and determines that the implementation of measures described in this Chapter is in furtherance police powers of the City of Daly City, and that these purposes are exempt from the provisions of the California Environmental Quality Act (CEQA); Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code, as provided in categorical exemption within CEQA’s categorical exemption for activities involving regulation of activities.

SECTION 4: Publication/Summary Pursuant to the provisions of Government Code Section 36933, a summary of this ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post it in the City Clerk’s office a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall (1) publish the summary and (2) post in the City Clerk’s office a certified copy of the full text of this ordinance along with the names of those City Council members voting for and against this ordinance or otherwise voting.

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ADDING CHAPTER 15.70 RE: MANAGEMENT OF PCBs DURING
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Introduced this 8th day of April 2019.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the 22nd day of April 2019, by the following vote:

AYES, Councilmembers Daus-Magbual, DiGiovanni,

Manalo, Sylvester, Buenaventura

NOES, Councilmembers None

Absent, Councilmembers: None

K. Annette Hipona
CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

RAYMOND A. BUENAVENTURA
MAYOR OF THE CITY OF DALY CITY