



Legislation Text

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Ordinance adding Chapter 14.06 to the South San Francisco Municipal Code to manage polychlorinated biphenyls (PCBs) during building demolition projects.

WHEREAS, building demolition is a significant source of PCBs in urban stormwater; and

WHEREAS, stormwater is the largest identified source of PCBs flowing into the San Francisco Bay; and

WHEREAS, the Municipal Regional Stormwater NPDES permit (“NPDES permit”) requires permittees to manage PCB-containing materials during building demolition; and

WHEREAS, Bay Area Stormwater Management Agencies Association (BASMAA) developed a model ordinance (“Model Ordinance” or “Ordinance”) to assist permittees in managing PCBs during building demolition and to effectuate a significant PCB load reduction; and

WHEREAS, adoption and implementation of the Ordinance will result in a 2 kilogram per year PCB load reduction during the current NPDES permit term; and

WHEREAS, the Ordinance targets priority building materials that may contain relatively high levels of PCBs, especially in buildings constructed between 1950 and 1980; and

WHEREAS, the priority building materials are caulking, thermal/fiberglass insulation, adhesive/mastic, and rubber window gaskets; and

WHEREAS, adoption of the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to the provisions of Section 15308 of CEQA Guidelines which exempts 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 and implement the Ordinance in order to reduce PCBs in stormwater runoff originating in the City.

NOW, THEREFORE, BE IT ORDAINED that based on the entirety of the record before it, as described below, the City Council of the City of South San Francisco does hereby ORDAIN as follows:

**SECTION 1.**            **Amendments**

The City Council hereby makes the findings contained in this Ordinance and adds Chapter 14.06 to the Municipal Code to read as follows. Sections and subsections that are not included in this Ordinance are unaffected by this Ordinance and shall remain in full force and effect.

**Chapter 14.06 Management of PCBs During Building Demolition Projects**

**Section 14.06.010** Purpose  
**Section 14.06.020** Definitions  
**Section 14.06.030** Applicability  
**Section 14.06.040** Exemptions  
**Section 14.06.050** PCBs in Priority Building Materials Screening Assessment  
**Section 14.06.060** Agency Notification, Abatement, and Disposal for Identified PCBs  
**Section 14.06.070** Compliance with California and Federal PCBs Laws and Regulations  
**Section 14.06.080** Information Submission and Applicant Certification  
**Section 14.06.090** Recordkeeping  
**Section 14.06.100** Obligation to Notify City of South San Francisco of Changes  
**Section 14.06.110** Liability  
**Section 14.06.120** Enforcement  
**Section 14.06.130** Fees  
**Section 14.06.140** City of South San Francisco Projects

**Section 14.06.010 Purpose**

- (a) The provisions of this Chapter shall be construed to accomplish the following purposes:
1. Require building demolition permit applicants to conduct a PCBs in Priority Building Materials Screening Assessment and submit information documenting the results of the screening. Such submitted documentation shall 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 14.06.020 Definitions

In addition to the general definitions applicable to the municipal code, whenever used in this Chapter, 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 from the requirements of this ordinance.
- (b) “Applicant” means a person applying for a building demolition permit as required by CBC Chapter 1 section 101.2 and title 15 of the South San Francisco Municipal Code.
- (c) “Appropriate Authority” means the South San Francisco Department of Public Works, Water Quality. City of South San Francisco.
- (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) “CBC” means California Building Code
- (f) “City” means the City of South San Francisco.
- (g) “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.
- (h) “DTSC” means the State of California Department of Toxic Substances Control.
- (i) “EPA” means The United States Environmental Protection Agency.
- (j) “PCBs” means polychlorinated biphenyls.
- (k) “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.
- (l) “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 crawls 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.
- (m) “Priority Building Materials Screening Assessment Applicant Package” or “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 Storm Water Management Agencies Association, August 2018).
- (n) “Regional Water Board” means the California Regional Water Quality Control Board, San Francisco Bay Region.
- (o) “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 14.06.030    Applicability**

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

### **Section 14.06.040    Exemptions**

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

### **Section 14.06.050    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:

1. 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
2. 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 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 shall provide additional details.

### **Section 14.06.060    Agency Notification, Abatement, and Disposal for Identified PCBs**

When the PCBs in Priority Building Materials Screening Assessment identifies one or more Priority Building Materials with PCBs, 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 shall be provided in the Applicant Package.

#### **Section 14.06.070 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 14.06.080 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 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.
  5. Applicant's certification of the accuracy of the information submitted.
- (b) The Director of Public Works may specify a format or issue guidance for the submission of the information.

#### **Section 14.06.090 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 14.06.100 Obligation to Notify the City of South San Francisco of Changes**

The Applicant shall submit written notifications documenting any changes in the information submitted in compliance with this Chapter. The Applicant shall submit the revised information to the South San Francisco Department of Public Works, Water Quality. City of South San Francisco when changes in project conditions affect the information submitted with the permit application.

#### **Section 14.06.110 Liability**

The Applicant is responsible for safely and legally complying with the requirements of this Chapter. Neither the issuance of a permit under the requirements of CBC Chapter 1 section 101.2 and Title 15 of the South San Francisco Municipal Code, nor the compliance with the requirements of this Chapter 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 South San Francisco for damages to persons or property.

**Section 14.06.120 Enforcement**

Failure to submit the information required in this Chapter or submittal of false information will result in enforcement under City of South San Francisco Municipal Code Chapter 14.04.

**Section 14.06.130 Fees**

In addition to the fees required under CBC Chapter 1 section 101.2 and Title 15 of the South San Francisco Municipal Code, all Applicants subject to this Chapter shall deposit funds with the City of South San Francisco and pay a fee as set forth in the City's master fee schedule sufficient to reimburse the City's costs for staff time required to implement this Chapter.

**Section 14.06.140. City of South San Francisco Projects**

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

**SECTION 2. Severability**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of South San Francisco hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION 3. Publication and Effective Date**

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 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.

This Ordinance shall become effective thirty (30) days from and after its adoption.

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