

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY OF UNION CITY ADDING CHAPTER
13.42 TO THE CITY OF UNION CITY MUNICIPAL CODE (MANAGEMENT OF
PCBs DURING BUILDING DEMOLITION PROJECTS)**

WHEREAS, in 2015, the Regional Water Board reissued the Municipal Regional Permit requiring municipalities to adopt new regulations managing PCBs-containing materials in building demolition; and

WHEREAS, the City of Union City currently regulates stormwater and other activities in accordance with the Regional Water Board NPDES permits and also currently regulates building demolition through a permitting process; and

WHEREAS, elevated PCB levels have been detected in the San Francisco Bay in certain sportfish. To minimize PCBs entering the Bay through stormwater, the Regional Water Board is requiring agencies to address sources of PCBs in stormwater runoff discharged to the Bay through municipal separate storm sewers systems (“MS4s”); and

WHEREAS, The regulation of PCBs in priority building materials contained within buildings constructed between January 1, 1950 to December 31, 1980 is necessary to protect and preserve the health of the Bay, as well as the marine life contained in the Bay, and to ensure the PCBs load carried to the Bay through stormwater is limited; and

WHEREAS, this Ordinance targets priority building materials including caulking, thermal/fiberglass insulation, adhesive/mastic, and rubber window gaskets, and targets buildings that may contain high levels of PCBs, especially in buildings constructed between 1950 and 1980; and

WHEREAS, the City Council desires to adopt and implement this Ordinance in order to reduce PCBs in stormwater runoff originating in the City of Union City.

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

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. 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.

SECTION 3. Municipal Code Amendment. The City Council hereby approves the amendments to the Municipal Code, more particularly, adding Chapter 13.42 as shown below:

Chapter 13.42 Management of PCBs During Building Demolition Projects

13.42.010 Purpose

- A. The provisions of this Chapter 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.

13.42.020 Definitions

In addition to the general definitions applicable to this Code, whenever used in this Chapter, 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 this Code.
- C. “Appropriate Authority” means the Building Official or designee of the City of Union City.
- 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. “DTCS” 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 crawl 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).

13.42.030. Applicability

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

13.42.040. Exemptions

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

13.42.050. 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 ≥ 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.

13.42.060. 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 is provided in the Applicant Package.

13.42.070. 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.

13.42.080. 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 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 Appropriate Authority may specify a format or guidance for the submission of the information.

13.42.090. 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.

13.42.100. Obligation to Notify the City of Union City 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 Appropriate Authority when changes in project conditions affect the information submitted with the permit application.

13.42.110. 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 this 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 Union City for damages to persons or property.

13.42.120. Enforcement

Failure to submit the information required in this Chapter or submittal of false information will result in enforcement under Chapter 1.16.

13.42.130. Fees

In addition to the fees required under Chapter 15.40, all Applicants subject to this Chapter shall deposit funds with the City of Union City, pay a fee sufficient to reimburse the City of Union City's costs for staff time required to implement this Chapter (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).

13.42.140. City of Union City Projects

City of Union 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 4. Urgency Findings and Declaration

The City Council finds and declares that this Ordinance must be adopted as an urgency matter because it is necessary for the immediate preservation of the public peace, health, and safety. The following facts and circumstances support such necessity: 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 TMLD 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 that these new programs are adopted and implementation begin by July 1, 2019. This Ordinance must be adopted as an urgency matter in order to meet the July 1, 2019 deadline.

Based on said findings, facts and circumstances, the City Council finds that this Ordinance should be adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety, and that it is necessary that this Ordinance should go into effect as described below.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the 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 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 6. Publication and Effective Date. Following adoption by at least 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 Code Section 36933.

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