

# ORDINANCE NO. .

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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## ORDINANCE ADDING SECTION 9218 TO DIVISION VII (BUILDING REGULATIONS) OF THE SAN MATEO COUNTY ORDINANCE CODE TO ESTABLISH REGULATIONS FOR MANAGEMENT OF BUILDING MATERIALS CONTAINING POLYCHLORINATED BIPHENYLS DURING BUILDING DEMOLITION IN COMPLIANCE WITH THE MUNICIPAL REGIONAL STORMWATER PERMIT

**SECTION 1. FINDINGS.** The Board of Supervisors of the County of San Mateo hereby finds and declares as follows:

- (a) Elevated levels of polychlorinated biphenyls (PCBs), a documented carcinogen, have been detected in fish in the San Francisco Bay (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 Control Board (Regional Water Board), through the Municipal Regional Stormwater Permit (MRP), which is now in effect, has required Bay Area municipalities to address sources of PCBs in stormwater runoff discharged to the Bay from municipal separate storm sewer systems (referred to as “MS4s” or storm drain systems);
- (c) The MRP requires that permittees, including the County of San Mateo, 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;
- (d) Consistent with the MRP and a screening protocol that was developed through a coordinated regional effort to implement this MRP requirement, this

Ordinance establishes regulations that require additional screening for projects that involve the demolition of an entire building constructed or remodeled between January 1, 1950 and December 31, 1980 (except for single-family homes and wood-framed structures), as projects that are high priority for PCB-containing building materials based on structure age, use, and construction.

**NOW, THEREFORE**, the Board of Supervisors of the County of San Mateo, State of California, **ORDAINS** as follows:

**SECTION 2.** Section 9218 is hereby added to Division VII of the San Mateo County Ordinance Code to be numbered and entitled and to read in its entirety as follows:

**SECTION 9218. MANAGEMENT OF POLYCHLORINATED BIPHENYLS (PCBs) DURING BUILDING DEMOLITION**

(a). Purpose

1. This Section establishes regulations for management of building materials containing polychlorinated biphenyls (PCBs) during building demolition activities in order to reduce the discharge of PCBs into receiving waters flowing to 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 County.
2. The requirements of this Section 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.

(b). Definitions

1. In addition to the general definitions applicable to these Regulations, whenever used in this Section, 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, unless exempt

pursuant to Section 9218(d). Applicable Structure does not include a single-family residence or any wood-framed structure.

- (b) "Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever applying for a building demolition permit as required by Section 9006.
- (c) "Building" means any structure used or intended for supporting or sheltering any use or occupancy.
- (d) "Demolition" means the wrecking, razing, or tearing down of any structure. This definition is intended to be interpreted consistently with the demolition activities undertaken by contractors with a C-21 Building Moving/Demolition Contractor's License.
- (e) "DTSC" means the State of California Department of Toxic Substances Control.
- (f) "EPA" means the United States Environmental Protection Agency.
- (g) "PCBs" means polychlorinated biphenyls.
- (h) "PCBs in Priority Building Materials Screening Assessment" or "Assessment" means the two-step process used to 1) determine whether the building proposed for demolition is high priority for PCB-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.
- (i) "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.
- (j) "Regional Water Board" means the California Regional Water Quality Control Board, San Francisco Bay Region.

(k) "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).

(c) Applicability

This Section applies to the demolition of any building.

(d) Exemptions

Applications for remodeling or partial building demolitions are exempt from the requirements of this Section.

(e) PCBs in Priority Building Materials Screening Assessment and Applicant Certification

1. Every Applicant for a building demolition permit shall conduct an assessment and submit the associated information and results as part of the building demolition permit application, including the following:
  - a. Owner and project information, including location, year building was built, description of building construction type, and anticipated demolition date.
  - b. Determination of whether the building proposed for demolition is an Applicable Structure based on the structure age, use, and construction.
  - c. If the project involves an Applicable Structure, indicate the concentration of PCBs in each Priority Building Material present. Demonstrate the presence or absence and concentration of PCBs in Priority Building Materials through existing information on specific product formulations (if available) or representative sampling and chemical analysis of the Priority Building Materials in the building by a certified analytical laboratory. If PCB concentrations are determined to be above the 50 parts per million (ppm) threshold for any Priority Building Material within the building via representative sampling and analysis, the Applicant shall include a contractor's report documenting the assessment and the analytical laboratory reports.
  - d. For each Priority Building Material present with a PCB concentration equal to or greater than 50 ppm, the approximate amount (linear feet or square feet) of that material in the building.
  - e. Applicant's certification of the accuracy of the information

submitted.

2. The County Manager, or his or her designee, may specify a format or guidance for submission of the information required by this Section.
3. Failure to submit all information required by this Section may result in a building demolition permit application being deemed incomplete.
4. The Board of Supervisors may, by resolution, authorize the collection of fees to recover the cost of administration and enforcement of this Section.

(f) Agency Notification, Abatement, and Disposal for Identified PCBs

When the Assessment identifies one or more Priority Building Materials with PCBs, the Applicant must comply with all related applicable federal and state laws that relate to management and cleanup of PCBs, including but not limited to PCBs in Priority Building Materials, other PCB-contaminated materials, PCB-contaminated liquids, and PCB waste, and which may require notification of the appropriate regulatory agencies, including the EPA, the Regional Water Board, and/or the DTSC.

(g) Recordkeeping

Applicants conducting a building demolition project for an Applicable Structure must maintain documentation of the results of the PCBs in Priority Building Materials Screening Assessment for a minimum of five years after submittal.

(h) Obligation to Notify the County of San Mateo of Changes

The Applicant shall submit written notifications to the Building Division documenting any changes in the information submitted in compliance with Section 9218(e) prior to engaging in any demolition activity.

(i) Liability

The Applicant is responsible for safely and legally complying with the requirements related to management and cleanup of PCBs. Neither the issuance of a permit under Section 9006, nor compliance with the requirements of this Section, 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 County of San Mateo for damages to persons or property.

(j) Violations

Failure to submit the information required in this Section or submittal of false information is a violation of the Ordinance Code and will result in enforcement pursuant to Chapter 1.40 of the Ordinance Code.

(k) County Projects

County departments shall comply with the requirements of this Section, except they shall not be required to obtain permits and approvals under these Regulations for work performed within County-owned properties and areas.

**SECTION 3. SEVERABILITY.**

If any provision, section, subsection, sentence, clause, phrase, or word of this Ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

**SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

The Board 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. EFFECTIVE DATE.**

This Ordinance shall be in effect thirty (30) days after adoption.

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