

ORDINANCE NO. 19-008

An Ordinance Of The City Council Of The City Of Emeryville Amending Sections 8-26.01 And 8-26.03 Of The Emeryville Municipal Code To Include Certain Demolition Waste Containing Polychlorinated Biphenyls (PCBs); CEQA Determination: Exempt Pursuant to CEQA Guideline Sections 15061(b)(3) And 15307

WHEREAS, the city of Emeryville has a duty to protect the natural environment, the economy, and the health of its citizens; and

WHEREAS, polychlorinated biphenyls (PCBs) have been detected in elevated levels in certain sport fish in San Francisco Bay (Bay), and the San Francisco Bay Regional Water Quality Control Board (Water Board) adopted a clean water action plan for PCBs in the Bay which requires municipalities and others to take action to reduce PCBs in the Bay; and

WHEREAS, certain types of building materials containing PCBs were in wide use between 1950 and 1980, especially caulking, thermal/fiberglass insulation, adhesive/mastic, and rubber window gaskets; and

WHEREAS, PCBs in building materials may be discharged during demolition and contribute to PCB contamination of stormwater runoff, which thereafter reaches the Bay; and

WHEREAS, the Water Board reissued its Municipal Regional Permit (MRP), a National Pollutant Discharge Elimination System (NPDES) permit that regulates discharges of stormwater runoff from municipal stormwater systems; and

WHEREAS, the MRP includes provisions that require Permittees, including the City of Emeryville, to develop new programs to manage PCB-containing building materials during demolition, while exempting remodeling, partial building, wood-framed structures, and single-family residences and limiting PCB-related regulation to buildings built or renovated between 1950 and 1980; and

WHEREAS, MRP Permittees, including the City of Emeryville, must have the necessary authority to regulate PCBs in demolition of Applicable Structures;

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

SECTION ONE: PURPOSE AND INTENT. The City originally adopted Chapter 26 of Title 8 of the Emeryville Municipal Code to supplement the provisions of the California Integrated Waste Management Act of 1989 (Cal. Public Resources Code, Section 40000, et seq.), the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D), the California Green Building Standards Code (CALGreen 2016) (adopted via Ordinance No. 16-008), and the City of Emeryville's landfill diversion goals, as stated in the Franchise Agreement with Waste Management of Alameda County, of less than 8000 tons going to landfill. The City has identified construction and demolition debris as a



significant target for reduction and recycling. The intent is to divert building materials from landfills, and process and return the materials into the economic mainstream, thereby conserving natural resources and stimulating markets for recycled and salvaged materials.

PCBs in certain building materials may be released upon building demolition; therefore, a permit process, specific site controls, and disposal requirements have been developed to ensure that PCBs from demolition are properly handled and disposed of. This Ordinance to amend section 8-26.01 of the Emeryville Municipal Code to include PCG's is needed to meet the requirements in Section C.12.f.ii of the Municipal Regional Stormwater Permit, issued by the San Francisco Regional Water Quality Control Board, Order No. R2-2015-0049.

SECTION TWO. AMENDING SECTION 8-26.01 OF THE EMERYVILLE MUNICIPAL CODE. Section 8-26.01 of the Emeryville Municipal Code is hereby amended to as follows, with additions are indicated in bold and underlined type and deletions are indicated in ~~strikeout~~ type:

8-26.01 Definitions

As used in this Chapter, certain words and phrases are defined as follows:

- a) "Alteration" or "Alter" shall mean "Any Construction or Alteration to an existing structure other than repair, for the purpose of maintenance or addition."
- b) "Alternative Daily Cover" (ADC) shall *mean cover* material other than earthen material placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.
- c) **"Applicable structure" means, at a minimum, commercial, public, institutional and industrial structures constructed or remodeled between the years 1950 and 1980 with building materials with PCB concentrations of 50 parts per million (ppm) or greater. Single-family residential and wood frame structures are excluded from Applicable Structure.**
- d) "Applicant" or his/her designee, shall mean any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the City for the applicable permits to undertake any Construction, Demolition, or Alteration project within the City.
- e) "California Green Building Standards Code" and "CAL Green" (Title 24, Part 11) refer to the coded section of the California Building Code currently in effect.
- f) "Conditioned Area/Volume/Size" means the area/volume/size of a building which is temperature controlled through heating and/or cooling systems.

- g) "Construction" means the building of any facility or structure or any portion thereof including any Alteration of an existing facility or structure.
- h) "Construction Costs" means the dollar valuation of a City Project as determined by the City of Emeryville Building Division.
- i) "Construction and Demolition Debris" means used or discarded materials removed from premises during Construction or Alteration of a structure resulting from Construction, remodeling, repair, or Demolition operations on any pavement, house, commercial building, or other structure. **Construction and Demolition Debris includes materials containing polychlorinated biphenyls (PCBs) in Applicable Structures.**
- j) "Conversion Rate" means the rate set forth in the standardized Conversion Rate Table approved by the City pursuant to this Chapter for use in estimating the volume or weight of materials identified in a Waste Management Plan.
- k) "Covered Project" shall include:
 - (1) All new Construction (commercial and residential) projects; and
 - (2) All Demolition projects (commercial and residential); and
 - (3) All residential remodeling or Alteration projects that increase the area, volume or size of conditioned or livable space of the building
 - (4) Nonresidential building additions and Alterations for which a building permit is required, except those permit types listed under 8-26.01
- l) "Demolition" means the decimating, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior requiring a demolition permit.
- m) "Divert" means to use material for any purpose other than disposal in a landfill or transformation facility (incinerator or the like).
- n) "Noncovered Project" shall include mechanical, electrical, plumbing, awning, racks, windows, doors antennas, signage and other permitted projects that are expected to generate waste measuring 2 lbs. or less per square foot of project area.
- o) **"PCB Demolition Permit" means a Permit issued by the City allowing demolition of an Applicable Structure.**

- p) **“PCB Management” means following an effective protocol, as defined by the City for managing materials with polychlorinated biphenyl (PCB) concentrations of 50 parts per million (ppm) in Applicable Structures at the time such structures undergo demolition, as required in the City’s Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit.**
- q) “Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.
- r) “Reuse” means further or repeated use of Construction and Demolition Debris.
- s) “Salvage” means the controlled removal of Construction and Demolition Debris from a permitted building or Demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.
- t) “Universal Waste” refers to products subject to regulation such as batteries, mercury-containing equipment, fluorescent bulbs and ballast, and other items included in Title 22 of California Code of Regulations.
- u) “WMP” or “Waste Management Plan” means a completed WMP form, approved by the City for the purpose of compliance with this Chapter, submitted by the Applicant for any Covered Project. The WMP identifies materials to be and ultimately removed from the project site, quantifies the materials by weight, with attached documentation, and reflects required diversion as specified in this ordinance
- v) “WMP Compliance Official” means the staff person(s) designated and authorized by the City Manager as being responsible for implementing this Chapter.

SECTION THREE. AMENDING SECTION 8-26.03 OF THE EMERYVILLE MUNICIPAL CODE. Section 8-26.03 of the Emeryville Municipal Code is hereby amended to as follows, with additions are indicated in bold and **underlined** type and deletions are indicated in ~~strikeout~~ type:

8-26.03 Submission of a Waste Management Plan

- a) WMP Forms: Applicants for building or Demolition permits involving any Covered Project shall complete and submit a WMP, on a WMP form approved by the City Building Official for this purpose as part of the application packet for the building or Demolition permit. The completed WMP shall indicate all of the following:
1. the estimated types of Construction and Demolition Debris or materials to be generated;

2. the vendor or facility that the Applicant proposes to use to collect or receive that material;
 3. Applicant contact and project information.
- b) Deconstruction: In preparing the WMP, applicants for building or demolition permits involving the removal of all or part of an existing structure shall consider deconstruction, to the maximum extent feasible, and shall make the materials generated thereby available for salvage prior to landfilling.
- c) Universal Waste: Non-residential Alterations and additions to building or tenant space that meets threshold as above are required to verify that Universal Waste items such as fluorescent lamps and ballast and mercury containing thermostats as well as other California prohibited Universal Waste materials are disposed of properly and are Diverted from landfills. A list of prohibited Universal Waste materials shall be included in the Construction documents.
- d) **PCB Identification and Control: All projects involving Applicable Structures must obtain a PCB Demolition Permit from the City. In order to obtain this Permit, information must be submitted to the City detailing the building materials involved, including test results showing PCB concentrations in all building materials specified in the Permit application. PCB Management must be employed and documented for all Permitted projects.**
- e) Waste Management Company: Utilize a waste management company that can provide verifiable documentation that the percentage of Construction and Demolition Debris is Diverted from the landfill complies with this ordinance.

SECTION FOUR. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that there is no possibility that the proposed ordinance will have a significant effect on the environment. This project is further exempt from CEQA under Section 15307 because the ordinance will create a regulatory process intended to protect water, a natural resource.

SECTION FIVE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

SECTION SIX. EFFECTIVE DATE

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION SEVEN. CODIFICATION

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six and Seven shall NOT be so codified.

This amended Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, June 18, 2019 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, July 9, 2019 by the following vote:

AYES:	<u>5</u>	Mayor Medina, Vice Mayor Patz, and Council Members Bauters, Donahue, and Martinez,
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY