To: Honorable Mayor and Members of the City Council
From: Community Environmental Advisory Commission
Submitted by: Nabil Al-Hadithy, Secretary to the CEAC
Subject: Clarification of Requirements for Demolitions Containing Asbestos

RECOMMENDATION
Direct the City Manager to write a letter, requesting clarification of asbestos permit requirements for demolitions from the appropriate air regulation agencies.

SUMMARY
State and federal regulations for demolitions that include or potentially include asbestos-containing materials are inconsistently applied in California because the definition of “demolition” varies between agencies. CEAC recommends that the City Manager send the attached draft letter to U.S. EPA, Cal Air Resources Board, and the Bay Area Air Quality Management District, requesting that they review their requirements for permitting demolitions, and communicate consistent requirements to all local permitting agencies.

FISCAL IMPACTS OF RECOMMENDATION
Minimal impacts to the City. The impact of proper application of the asbestos regulations may add a minor cost to evaluate the presence of asbestos.

CURRENT SITUATION AND ITS EFFECTS
Because asbestos has been extensively used in residential, commercial and industrial construction up to the 1970s, and a few products are still allowed to be produced today, the materials continue to pose a significant threat. The US Environmental Protection Agency (USEPA) added 40 CFR Chapter 61 (40CFR §61.141), Subpart M, National Emission Standard for Asbestos to the National Emission Standard for Hazardous Air Pollutants (NESHAPS) codes to better control asbestos in demolitions. This regulation requires owners or operators of a demolition activity to thoroughly inspect a facility or part of a facility where demolition will occur. 40CFR §61.141 defines “Demolition” as the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.”

The State of California adopted Health & Safety Code19827.5 to comply with the above. This code requires that all county, city or county/city agencies that issue building permits must first get Air Quality Management District (AQMD) approval by referring the
applicant to the local AQMD. Nineteen (19) Air Districts in California did not agree to accept these NESHAPS responsibilities. That responsibility for the 19 was given to the California Air Resources Board (CARB). In our region, the Bay Area AQMD (BAAQMD) adopted Regulation 11-2-401.3 to comply with the same federal and state laws.

BACKGROUND
Asbestos is a fibrous mineral that because of its strength and resistance to heat and chemicals was a common material used in building construction, including roof shingles, ceiling and floor tiles, coatings, etc.¹ When asbestos is damaged or disturbed, such as during a remodeling or repair, it can become airborne. The primary health risks of inhaling asbestos are asbestosis, lung cancer, and mesothelioma.

The conventional wisdom for demolitions in the Bay Area is that the BAAQMD should only be notified when a full demolition is being permitted by a local building permit agency. That is, partial demolitions and major remodels (which involve removal of a load-bearing structure) need not be reported to the BAAQMD. Members of Contra Costa, San Francisco, Berkeley, and Novato and other municipalities were consulted on how they refer to asbestos demolitions and all were found to practice referrals to BAAQMD only for full demolitions. Some building permit agencies define demolition as full-structure or partial-structure removal. The City of Novato posted a web notice that Demolition Notification to the BAAQMD is only required for full demolitions "NOTE: Partial demolition of buildings for remodel or additions do not require BAAQMD approval." This written instruction is essentially the gist of the advice given by all Bay Area building permit agencies. The result is that only a few demolitions (as defined in 40 CFR) are being regulated for asbestos by California AQMDs and the California Air Resources Board.

In communications with the CARB, their lead technical person noted that the CARB defines demolitions as per 40CFR. CARB believes it is in compliance with NESHAPS, and they are getting all applicable remodels and demolitions that are within their jurisdiction. CARB has attempted to send out educational information to building permit and AQMDs outside of its direct authority.

Most BAAQMD staff interviewed stated that their interpretation was as in 40 CFR, that is, full or partial demolitions that are not exempted should apply for a permit from the BAAQMD. Regulation 11-2-303.8 requires that a survey be performed prior to demolition to determine the presence of regulated asbestos-containing material (RACM). The person who performs the survey must be Cal-OSHA certified and must have taken and passed an EPA approved building course. In the case of residential buildings having four or fewer dwelling units, the owner/operator can sample and test suspected asbestos-containing materials rather than hiring a certified consultant. Other air districts have different interpretations. In the South Coast Air District, Rule 1403 states that homeowners are exempt only if they are the legal owner and permanent

¹ See USEPA for more information: http://www.epa.gov/asbestos/
resident of the house, and are not employing a contractor (i.e. doing the renovation themselves).

In the Sacramento Air District, Rule 902 exempts residential structures with four or less units, but applies to all commercial structures.

When properly contained and left undisturbed, asbestos poses low risk to health-related impacts. However, the improper removal of previously undamaged asbestos can increase concentrations for months thereafter, and expose a relatively young cohort of asbestos removal workers. A full demolition may potentially expose workers and neighbors to asbestos in an open air environment. Workers who are potentially exposed to asbestos indoors while a building is undergoing major renovation are subject to exposure in a confined space for weeks.

The Community Environmental Advisory Commission (CEAC) voted on March 3, 2011 in favor of advising the City Council of this risk and asking that the City Manager write to the US EPA, CARB and BAAQMD and ask them to clarify the implementation of NESHAPs for asbestos as it defines demolitions. The motion was passed unanimously by McDonald, Bartlett (proposed), Leventis, Banales, Hernandez and Schlachter (seconded).

RATIONALE FOR RECOMMENDATION

As demonstrated, there is clearly a variety of interpretations for asbestos removal, and the CEAC has reason to believe that the intent of federal codes for demolitions potentially involving asbestos are not being met by local building permitting agencies. Asbestos has been classified as a known human carcinogen (a substance that causes cancer) by the U.S. Department of Health and Human Services, the EPA and the International Agency for Research on Cancer. $50 billion has been spent on mitigations for asbestos historically. If asbestos presents significant health risks to the public and to workers, elevated risks are also present arguably in activities involving large remodels, in addition to full demolitions of a structure.

The CEAC recognizes that public health and safety should be balanced with implementation cost in a consistent manner across jurisdictions. Restricting permitting to only full demolitions, potentially does not address a significant source of exposure. However, requiring all remodeling and renovation projects could overwhelm resource-depleted agencies. Though the CEAC cannot comment on the appropriate balance, it hopes that this discussion can be started and that competing interests can be resolved.

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2 See South Coast Air District for more information: http://www.aqmd.gov/comply/asbestos/asbestos.html
3 See Sacramento Air District for more information: http://www.airquality.org/compliance/asbestos.shtml
5 Though there is limited research on this topic, the importance of safe removal of asbestos was noted in healthcare facilities undergoing renovation in Ohio. Racine, W.P., *Emissions concerns during renovation in the healthcare setting: asbestos abatement of floor tile and mastic in medical facilities*. J Environ Manage, 2010. 91(7): p. 1429-36.
ALTERNATIVE ACTIONS CONSIDERED
The CEAC did consider no action and to allow only full demolitions to be subject to asbestos regulations out of concern for additional costs. However, the CEAC concluded that if the intent of the regulation is to avoid exposure to airborne asbestos, it is likely not being met when restricted to permitting of only full demolitions. Additionally, in a city that has an older housing stock, the liability issues for the public could potentially be considerable.

The CEAC also discussed criteria and metrics that could be used to more cost-effectively screen buildings that require permitting. However, the CEAC recognized that this matter must be referred to and clarified by the authorized regulatory body.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission’s Report.

CONTACT PERSON
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Attachment
1. Draft Letter
DRAFT LETTER

Deborah Jordan, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105
Mary D. Nichols, Cal Air Resources Chair of Board of Directors, Byron Sher Auditorium, 1001 I Street, 2nd Floor, Sacramento, California 95814
Supervisor Brad Wagenknecht, Chair, Board of BAAQMD, 939 Ellis Street, San Francisco, CA 94109

On April 26th 2011, the Berkeley City Council approved this referral to the US Environmental Protection Agency (USEPA), the California Air Resources Board (CARB) and the Bay Area Air Quality Management District (BAAQMD) on behalf of the Community Environmental Advisory Commission (CEAC).

The referral requests that the USEPA, CARB and BAAQMD review their regulatory requirements for permitting demolitions and evaluate the proper requirement for local building permit agencies to refer demolitions, remodels, etc., and communicate this requirement to all local permitting agencies. The number of asbestos permits issued by the BAAQMD (known as J Permits) should be an indication that very few major remodels are being referred to Air Districts.

If these agencies determine that the law requires regulatory oversight for all demolitions, not only for complete demolition of structures, then they should realize that only a fraction of demolitions are being regulated. It is our evaluation that elevated risks to asbestos exposure are also present in partial demolitions where workers continue to work in confined spaces, and where asbestos is potentially concentrated. The communication to local agencies should clearly identify the difference in the National Emission Standard for Hazardous Air Pollutants (NESHAPS) definition of the term “demolition,” which includes the removal of load-bearing walls, and the definition used in the Building Code, which is the complete removal of a structure. It is incumbent on the regulatory agencies to correct the misconception or miscommunication to local building permit agencies.

It is conceivable that the agencies addressed in this letter believe the risks to workers and neighbors who unknowingly work or live next to major remodels that have not been inspected for asbestos is low. In such cases, it would be appropriate to consider public health and safety with implementation costs, and address a change in the rules and/or laws that reflects the appropriate balance.

City Manager