

File No. 170867

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Comm: Public Safety & Neighborhood Services

Date: October 11, 2017

Board of Supervisors Meeting:

Date: _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance - VERSION 2 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest - VERSION 2 |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

- | | | |
|-------------------------------------|--------------------------|--------------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral FYI - August 2, 2017</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Prepared by: John Carroll

Date: October 6, 2017

Prepared by: _____

Date: _____

1 [Environment Code - Flame Retardant Chemicals in Upholstered Furniture and Juvenile
2 Products]

3 **Ordinance amending the Environment Code to ban the sale in San Francisco of**
4 **upholstered furniture and juvenile products made with or containing an added flame**
5 **retardant chemical.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Findings.

15 (a) The San Francisco Precautionary Principle Policy Statement in Chapter 1 of the
16 Environment Code seeks to minimize harm by using the best available science to make policy
17 choices that take into account the least environmentally harmful alternatives. A precautionary
18 approach does not merely ask whether a chemical is safe, it also asks whether its use serves
19 any beneficial purpose in the first place.

20 (b) The California Bureau of Electronic and Appliance Repair, Home Furnishings and
21 Thermal Insulation (BEARHFTI) is charged with developing state flammability standards for
22 adoption via regulation. Since the adoption of California Technical Bulletin 117 ("TB 117") in
23 1975 setting forth flammability standards, flame retardant chemicals have been routinely used
24 in upholstered furniture and certain juvenile products to meet TB 117's open-flame standard.
25 In 2013, the State of California updated its flammability standard with the adoption of
Technical Bulletin 117-2013 ("TB 117-2013"). Flame retardant chemicals were commonly

1 used to meet TB 117. By contrast, compliance with TB 117-2013 is widely being achieved
2 without the use of flame retardant chemicals. TB 117-2013 also exempts certain juvenile
3 products from meeting its flammability standard.

4 (c) Scientists have found that organohalogens and some organophosphorous flame
5 retardant chemicals exhibit one or more of the key characteristics of a class of synthetic
6 organic compounds commonly referred to as Persistent Organic Pollutants (POPs), in that
7 they are bio-accumulative, persistent, capable of long range transport, and/or toxic.

8 (d) A study led by Duke University published in 2012 of residential couches purchased
9 in the United States between 1985 and 2010 revealed that the foam inside 85% of couches
10 tested contained flame retardant chemicals.

11 (e) Another Duke University led study published in 2011 revealed that foam in 80% of
12 tested baby products contained toxic or potentially harmful flame retardant chemicals, and
13 that the most commonly occurring flame retardant in these products was tris(1,3-
14 dichlorisopropyl) phosphate (TDCPP). Furthermore, testing by the Washington Department of
15 Ecology published in the Department's report to the Washington State legislature and most
16 recently updated in 2015, uncovered a variety of flame retardants in children's products and
17 upholstered furniture, including six halogenated flame retardants. A more recent Duke
18 University study published in 2015 found a correlation between infants' exposure to juvenile
19 products containing added flame retardants, and the level of TDCPP, one type of halogenated
20 flame retardant chemical, in the infants' bodies.

21 (f) Inhalation and ingestion of indoor dust is a common route of human exposure to
22 flame retardant chemicals. Studies have shown that indoor dust contains anywhere from 1.5
23 to 50 times greater concentration of flame retardant chemicals than the outdoor environment.
24 Given that humans spend 90% of their time indoors, human exposure to flame retardants can
25 be significant.

1 (g) A 2010 National Health and Nutrition Examination Survey conducted by the
2 National Center for Health Statistics detected polybrominated diphenyl ether ("PBDE") flame
3 retardants in the blood of 97% of those surveyed. Children living in California have some of
4 the highest documented blood PBDE concentrations of any population studied. A 2014
5 University of California, Berkeley study found flame retardants in the dust of 100% of the
6 California early childhood education facilities studied. In addition, TDCPP levels in 51% of the
7 facilities studied exceeded Proposition 65 guidelines for carcinogens.

8 (h) Scientists recognize the urgency to reduce the exposure of vulnerable populations,
9 particularly young children, to flame retardant chemicals. A consensus statement issued by
10 the Project Targeting Environmental Neurodevelopmental Risks (Project TENDR) found that
11 PBDEs are associated with neurodevelopmental disorders in children.

12 (i) TDCPP, tris(2-chloroethyl) phosphate (TCEP), and Tris(2,3-dibromopropyl)
13 phosphate (TDBPP) have been linked to cancer, as well as repercussions on both
14 reproductive health and embryo development. In addition, these chemicals are listed on
15 California's Proposition 65 list of chemicals known to cause cancer, birth defects, or other
16 reproductive harm.

17 (j) In 2017, the federal Consumer Product Safety Commission issued a guidance
18 document based on the "overwhelming scientific evidence" presented to the Commission to
19 alert the public to serious concerns about the toxicity of organohalogen flame retardants
20 added to children's products, furniture, mattresses and plastic casings surrounding
21 electronics. The Commission requested that manufacturers eliminate the use of these
22 chemicals in their products. It also recommended that retailers obtain assurance from
23 manufacturers that their products do not contain these chemicals, and that consumers,
24 especially those who are pregnant or with young children, avoid products containing these
25 chemicals.

1
2 (k) Effective July 1, 2017, California's Department of Toxics Substances Control
3 identified children's foam-padded sleeping products containing TDCPP or TCEP as priority
4 products for evaluation in connection with health hazards.

5 (l) Firefighters are at particular risk for exposure to flame retardants via inhalation and
6 ingestion of smoke, dust, and debris from household products and insulation containing flame
7 retardants. Elevated rates of cancer have been reported among firefighters; and studies have
8 found firefighters' PBDE blood levels to be three times higher than levels in other Americans,
9 and twice as high as levels among California residents.

10 (m) At least one study has demonstrated a correlation between household dust
11 containing flame retardants and elevated levels of flame retardants in house cats' blood.
12 These elevated levels of flame retardants have also been linked to higher incidence of feline
13 hyperthyroidism.

14 (n) Flame retardant chemicals have been detected in the atmosphere, seawater,
15 freshwater, sediments, and a variety of wildlife. Because they resist degradation and are
16 capable of being transported long distances, flame retardant chemicals have been found in
17 remote regions such as the Arctic and in deep sea life.

18 (o) Consumer products containing flame retardants may be discarded at landfills at the
19 end of their useful lives. Flame retardants in landfills have been shown to contaminate landfill
20 leachate and biosolids, and levels of flame retardants are higher in people and wildlife living
21 near landfills.

22 (p) The federal government has failed to adequately regulate the use of flame
23 retardant chemicals. In 2016, Congress passed the Frank R. Lautenberg Chemical Safety for
24 the 21st Century Act, which adds to the responsibilities of the United States Environmental
25 Protection Agency (EPA) under the federal Toxic Substances Control Act, codified in the

1 United States Code at Title 15, Chapter 53, to assess and regulate chemicals. The EPA has
2 yet to restrict use of any flame retardant chemicals under this enactment.

3 (q) In the absence of federal action, California and other states have taken steps to
4 limit or ban the use of certain flame retardant chemicals.

5 (r) The California Legislature in Health and Safety Code Section 108922 banned the
6 commercial manufacture and distribution of products on or after June 1, 2006 that contain
7 over a tenth of a percent of either of two brominated flame retardant chemicals, octa- and
8 penta-brominated diphenyl ethers. However, many other flame retardant chemicals, such as
9 known carcinogens TCEP and TDCPP, and highly persistent HBCD, remain in use. One
10 2016 meta-analysis found 47 unique non-PBDE flame retardant chemicals in indoor house
11 dust. Three of these chemicals were found in over 90% of samples, indicating that flame
12 retardants are ubiquitous in indoor environments.

13 (s) A Consumer Product Safety Commission study found that there was no significant
14 difference in fire safety between foams with added flame retardant chemicals formulated to
15 pass TB 117, and foams not containing any flame retardant chemicals.

16 (t) BEARHFTI currently exempts the following types of juvenile product from State
17 flammability standards: bassinets, highchair pads, nursing pads, booster seats, infant
18 bouncers, nursing pillows, car seats, infant carriers, playpen side pads, changing pads, infant
19 seats, playards, floor play mats, infant swings, portable hook-on chairs, highchairs, infant
20 walkers, strollers.

21 (u) TB 117-2013 sets forth flammability standards, but does not govern the use of
22 flame retardant chemicals. Some product manufacturers thus still opt to use flame retardant
23 chemicals in upholstered furniture and juvenile products, even though these chemicals are not
24 necessary for compliance with TB 117-2013.
25

1 (v) In 2014, California enacted Senate Bill 1019, requiring manufacturers of product
2 items covered by TB 117-2013 to affix a label to each item disclosing whether the item
3 contains or does not contain flame retardant chemical(s).

4 (w) Since 2015, the Department of the Environment has conducted outreach and
5 provided technical assistance to retailers of upholstered furniture, encouraging them to sell
6 furniture that is labeled as not containing chemical flame retardants. Approximately 55 out of
7 200 retailers in San Francisco now sell a range of upholstered furniture items that are free of
8 flame retardant chemicals at a variety of price points.

9 (x) The City has taken complementary steps in an effort to reduce San Franciscans'
10 exposure to flame retardant chemicals. Pursuant to San Francisco's Environmentally
11 Preferable Purchasing Ordinance in Chapter 2 of the Environment Code, some City contracts
12 now limit the City from purchasing furniture containing flame retardant chemicals. Greater
13 restrictions on sales in San Francisco of products containing flame retardant chemicals will
14 facilitate the City's effort to avoid consumption of such products.

15 (y) With a Citywide restriction on sales of certain furniture and juvenile products that
16 contain flame retardant chemicals, San Francisco can play a pivotal role in mitigating
17 exposure to flame retardants and their adverse effects on people and animals in the City.

18
19 Section 2. The Environment Code is hereby amended by adding Chapter 28,
20 consisting of Sections 2801 through 2807, to read as follows:

21 **CHAPTER 28: FLAME RETARDANT CHEMICALS**

22 **IN UPHOLSTERED FURNITURE AND JUVENILE PRODUCTS**

23 **SEC. 2801. TITLE.**

24 *This Chapter 28 may be known as the "Flame Retardant Chemicals in Upholstered Furniture*
25 *and Juvenile Products Ordinance."*

1 **SEC. 2802. DEFINITIONS.**

2 For the purposes of this Chapter 28, the following terms have the following meanings:

3 “Covered Product” means Upholstered Furniture, Reupholstered Furniture, or Juvenile
4 Products, any component of which has been made with or contains a Flame Retardant Chemical at a
5 level above 1,000 parts per million. Covered Products do not include (1) used or second-hand furniture
6 that is not Reupholstered Furniture, or (2) used or second-hand Juvenile Products.

7 “Director” means the Director of the Department of the Environment.

8 “Establishment” means any store, stand, booth, concession, or any other business enterprise
9 that engages in the Sale of Covered Products in San Francisco, and/or in the business of reupholstering
10 residential furniture in San Francisco.

11 “Flame Retardant Chemical” means any chemical or chemical compound for which a
12 functional use is to resist or inhibit the spread of fire. Flame Retardant Chemicals include, but are not
13 limited to, halogenated, phosphorous based, nitrogen based, and nanoscale flame retardants; flame
14 retardant chemicals listed as “designated chemicals” pursuant to Section 105440 of the California
15 Health and Safety Code, as amended; and any chemical or chemical compound for which “flame
16 retardant” appears on the substance Safety Data Sheet (“SDS”) pursuant to Section 1910.1200(g) of
17 Title 29 of the Code of Federal Regulations, as amended.

18 “Juvenile Product” means a new, not previously owned product subject to the Home
19 Furnishings and Thermal Insulation Act (Cal. Business and Professions Code Sec. 19000 et seq.) and
20 designed for residential use by infants and children under 12 years of age, including but not limited to
21 a bassinet, booster seat, changing pad, floor play mat, highchair, highchair pad, infant bouncer, infant
22 carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side pad, playard,
23 portable hook-on chair, stroller, and children’s nap mat. Juvenile Products do not include:

24 (a) products that are not primarily intended for use in the home, such as products or
25 components for motor vehicles, watercraft, aircraft, or other vehicles;

1 (b) products subject to Title 49, Part 571 of the Code of Federal Regulations regarding
2 parts and products used in vehicles and aircraft;

3 (c) products required to meet federal flammability standards in Title 16, Parts 1632 or
4 1633 of the Code of Federal Regulations regarding mattress products; and

5 (d) products required to meet State flammability standards in California Technical
6 Bulletin 133, entitled "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies."

7 "Reupholstered Furniture" means furniture whose original fabric, padding, decking, barrier
8 material, foam, and/or other resilient filling has been replaced by an Establishment, that has not been
9 Sold since the time of such replacement, and that is required to meet the flammability standards set
10 forth in California Technical Bulletin 117-2013 entitled "Requirements, Test Procedure and Apparatus
11 for Testing the Smolder Resistance of Materials Used in Upholstered Furniture." Reupholstered
12 Furniture shall not include products required to meet California Technical Bulletin 133.

13 "Sale," or any of its variants, means any of the following, or combination thereof, undertaken
14 by an Establishment: sell, offer for sale, transfer possession for compensation, trade, rent, lease, or
15 otherwise give or distribute, and/or an intent to conduct any of these activities.

16 "Upholstered Furniture" means new, not previously owned seating made with soft materials,
17 including but not limited to fabric, padding, decking, barrier material, foam, and/or other resilient
18 filling, that is required to meet the flammability standards set forth in California Technical Bulletin
19 117-2013 entitled "Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of
20 Materials Used in Upholstered Furniture." Upholstered Furniture shall not include products required
21 to meet California Technical Bulletin 133.

22 **SEC. 2803. PROHIBITING THE SALE OF UPHOLSTERED FURNITURE AND JUVENILE**
23 **PRODUCTS CONTAINING FLAME RETARDANT CHEMICALS.**

24 (a) Restrictions. Beginning January 1, 2019, no Establishment may Sell a Covered Product. In
25 addition, beginning January 1, 2019, no Establishment may reupholster Upholstered Furniture or

1 Reupholstered Furniture using soft material, including but not limited to fabric, padding, decking,
2 barrier material, foam, and/or other resilient filling that contains or is made with a Flame Retardant
3 Chemical at a level above 1,000 parts per million.

4 (b) **Compliance.** Compliance with Section 2803(a) with respect to each Covered Product shall
5 be determined in accordance with the following. For Upholstered Furniture and Reupholstered
6 Furniture, Establishments shall ensure that every item they Sell is affixed with a label that (1) meets the
7 requirements of Senate Bill 1019, and (2) states that the item does not contain Flame Retardant
8 Chemical(s). For each Juvenile Product, an Establishment may demonstrate compliance by retaining
9 on file and making available for inspection upon request a written statement from the product supplier
10 attesting that the Juvenile Product does not contain a Flame Retardant Chemical. The Director of the
11 Department of the Environment shall, in his or her lawful discretion, have authority to set forth in
12 regulations additional methods by which Establishments may demonstrate compliance with this
13 Chapter 28.

14 (c) **Petitions.** Notwithstanding subsections (a) and (b), an Establishment subject to the
15 restrictions in this Chapter 28 may, in writing, petition the Director of the Department of the
16 Environment for a waiver from strict compliance with this Chapter, where the Establishment can
17 demonstrate that strict compliance shall cause severe hardship or practical difficulty, or would not be
18 feasible. Any waiver shall be crafted as narrowly as possible, to maximize compliance as required by
19 this Chapter 28, and shall be in writing. A petition that does not receive a response from the
20 Department within 60 days from when it was received by the Department shall be deemed granted.

21 (d) Five years from this Chapter 28's effective date, the Director of the Department of the
22 Environment shall evaluate the efficacy of this Chapter in reducing San Franciscans' exposure to flame
23 retardant chemicals, and shall submit a written report based on the evaluation to the Mayor and the
24 Board of Supervisors, with recommendations, if any, for changes in City laws or programs to achieve
25 greater reduction in San Franciscans' exposure to flame retardant chemicals.

1 **SEC. 2804. IMPLEMENTATION AND ENFORCEMENT.**

2 (a) The Director of the Department of the Environment may issue rules and regulations
3 necessary or appropriate for the implementation and enforcement of this Chapter 28.

4 (b) If the Director determines that any person has violated this Chapter 28, or a regulation
5 adopted pursuant to this Chapter 28, the Director shall send a written warning, as well as a copy of
6 this Chapter 28 and any regulations adopted pursuant to it, to the person who violated the Chapter or
7 regulation. The person shall have 30 days after receipt of the warning to correct the violation.

8 (c) If the person in violation fails to correct the violation, the Director may impose an
9 administrative fine for the violation. Administrative Code Chapter 100, "Procedures Governing the
10 Imposition of Administrative Fines," as amended from time to time, is hereby incorporated in its
11 entirety and shall govern the imposition, enforcement, collection, and review of administrative citations
12 issued to enforce this Chapter 28 or any rule or regulation adopted pursuant to this Chapter. Each
13 Covered Product item Sold or for Sale on each day shall constitute a separate violation for these
14 purposes.

15 (d) The City Attorney or any organization with tax exempt status under 26 United States Code
16 Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting human health and/or the
17 environment in the San Francisco Bay Area may bring a civil action to enjoin a violation of or compel
18 compliance with any requirement of this Chapter 28 or any rule or regulation adopted pursuant to this
19 Chapter 28, as well as for payment of civil penalties and any other appropriate remedy. The court
20 shall award reasonable attorney fees and costs to the City Attorney or nonprofit organization that is the
21 prevailing party in a civil action brought under this Chapter 28. A nonprofit organization may institute
22 a civil action under this subsection (e) only if:

23 (1) The nonprofit organization has filed a complaint with the Director;

24 (2) 90 days have passed since the filing of the complaint;

1 (3) After such 90-day period, the nonprofit organization provides written notice to the
2 Director and the City Attorney's Office of its intent to initiate civil proceedings;

3 (4) The Director has not issued a determination that there has been no violation of any
4 requirement of this Chapter 28; and

5 (5) The City Attorney's Office has not provided written notice to the nonprofit
6 organization of the City's intent to initiate civil proceedings within 90 days of receipt of the written
7 notice from the nonprofit organization referenced in subsection (d)(3).

8 (e) Any person in violation of this Chapter 28 or any rule or regulation adopted pursuant to
9 this Chapter 28 shall be liable to the City for a civil penalty in an amount not to exceed \$1,000 per day
10 per violation. Each day on which the violation continues shall constitute a separate violation; and each
11 Covered Product item for Sale shall also constitute a separate violation. Civil penalties shall not be
12 assessed pursuant to this Chapter 28 for the same violation for which the Director has assessed an
13 administrative penalty pursuant to this Chapter 28.

14 (f) In determining the appropriate civil or administrative penalty, the court or the Director
15 shall consider the extent of harm caused by the violation, the nature and persistence of the violation,
16 the frequency of past violations, any action taken to mitigate the violation, and the financial burden to
17 the violator.

18 (g) No criminal, civil, or administrative action under this Chapter 28 may be brought more
19 than one year after the date of the alleged violation.

20 **SEC. 2805. UNDERTAKING FOR THE GENERAL WELFARE.**

21 In adopting this Chapter 28, the City is assuming an undertaking only to promote the general
22 welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of
23 which it is liable in money damages to any person who claims that such breach proximately caused
24 injury.

25 **SEC. 2806. NO CONFLICT WITH FEDERAL OR STATE LAW.**

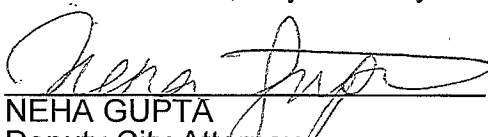
1 This Chapter 28 shall be construed so as not to conflict with applicable federal or State laws,
2 rules, or regulations. Nothing in this Chapter 28 shall authorize any City agency or department to
3 impose any duties or obligations in conflict with limitations on municipal authority established by State
4 or federal law at the time such agency or department action is taken. The City shall suspend
5 enforcement of this Chapter 28 to the extent that said enforcement would conflict with any preemptive
6 State or federal legislation subsequently adopted.

7 **SEC. 2807. SEVERABILITY.**

8 If any of the provisions of this Chapter 28 or the application thereof to any person or
9 circumstance is held invalid, the remainder of those provisions, including the application of such part
10 or provisions to persons or circumstances other than those to which it is held invalid, shall not be
11 affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter
12 28 are severable.

13
14 Section 3. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: 
21 NEHA GUPTA
22 Deputy City Attorney

23 n:\legana\as2017\1700075\01224569.docx

REVISED LEGISLATIVE DIGEST
(Substituted, 10/3/2017)

[Environment Code - Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products]

Ordinance amending the Environment Code to ban the sale in San Francisco of upholstered furniture and juvenile products made with or containing an added flame retardant chemical.

Existing Law

San Francisco law does not currently address the sale in the City of products containing flame retardant chemicals.

Amendments to Current Law

This proposal would add a new Chapter 28 to the Environment Code that would ban the sale in San Francisco of new upholstered furniture and reupholstered furniture subject to the State's flammability standard in Technical Bulletin 117-2013 ("TB 117-2013"), and certain juvenile products, that contain or are made with flame retardants at a level above 1,000 parts per million. It would also prohibit business enterprises in San Francisco engaged in reupholstering furniture from using materials containing above 1,000 parts per million of any flame retardant chemical for the purpose of replacing the foam, covering, or padding of any piece of upholstered furniture subject to TB 117-2013. These provisions would go into effect January 1, 2019.

The proposal would allow businesses to seek a partial or complete waiver from strict compliance with these provisions from the Director of the Department of the Environment. The proposal provides for enforcement against violations via administrative notice and fines as imposed by the Director pursuant to Administrative Code Chapter 100. It also enables the City Attorney and certain non-profit organizations to bring suit for violations under certain conditions, and provides for civil penalties as well as attorney fees and costs.

Background Information

This legislative digest accompanies a substitute version of this proposed ordinance introduced on October 3, 2017. This proposal in its initial form was first introduced before the Board of Supervisors on July 25, 2017.

Carroll, John (BOS)

From: Carroll, John (BOS)
Sent: Friday, October 06, 2017 10:03 AM
To: 'Judy Levin'; Board of Supervisors, (BOS)
Subject: RE: Letters of Support from Retailers of furniture and Children's Product for Proposed Ordinance 170867

Categories: 170867

Thanks for your comment letter.

I have added your message to the official file for the ordinance.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170867](#)

John Carroll

Assistant Clerk

Board of Supervisors

San Francisco City Hall, Room 244

San Francisco, CA 94102

(415)554-4445 - Direct | (415)554-5163 - Fax

john.carroll@sfgov.org | bos.legislation@sfgov.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

From: Judy Levin [<mailto:Judy@ceh.org>]

Sent: Thursday, October 05, 2017 6:17 PM

To: Carroll, John (BOS) <john.carroll@sfgov.org>

Subject: Letters of Support from Retailers of furniture and Children's Product for Proposed Ordinance 170867

Dear Mr. Carroll,

Attached please find letters of support for the proposed ordinance 170867 from San Francisco retailers of furniture and children's products. This ordinance will be heard in the Public Safety Committee on October 11, 2017. The Center for Environmental Health will be sending a separate letter of support for this ordinance on Monday 10/9/17 signed by 30 organizations, including NGOs and designers.

The ordinance would ban the sale of furniture and certain juvenile products with flame retardant chemicals. These chemicals have not been found to improve fire safety in these products and instead migrate out of products and find

their way into our dust, bodies, pets, wildlife and the environment. Many flame retardant chemicals are linked to serious health concerns including cancer, reproductive difficulties, reduced IQ and learning disabilities in children.

These letters have been combined into one PDF, but I have listed the signers below:

Steve Freeman, Room & Board
Susan Inglis, Sustainable Furnishings Council
Zach Norris, Cozy Couch
Bobbi Williams, Natural Resources
Mauricio Garcia, Roche Bobois
Lisa Beach, Benchmade Modern
Fiona O'Connor, Harrington Galleries
Antoinette Holder, Farnsworth
Eric Thompson, Bedroom & More
Suzanne Price, Sprouts
Esteban Kerner, Mapamundi Kids

I will also submit these letters to the individual Supervisors who are on the Public Safety Committee.

Please do not hesitate to contact me with any questions.

Many thanks,
Judy Levin

Judy Levin, MSW
Pollution Prevention Director

Center for
Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
T: 510.655.3900, ext. 316



Check out CEH's most recent efforts to protect families from toxic chemicals [here](#).

9/16/17

My name is Suzanne Price, and I am the CEO of Sprout San Francisco, a chain of children's stores based in San Francisco. Our San Francisco storefront has been open on Union Street for 8 years.

I am here to express my strong support for the proposed "Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products" ordinance.

As a retailer of children's products in San Francisco, I hear from parents and caregivers every day expressing concerns regarding the health and safety of the products they use with their children. I share their concerns and work hard to find healthy products for our clients. The proposed ordinance would be a great help to my business and customers by restricting products that contain harmful and unnecessary flame retardant chemicals.

This ordinance is not burdensome for me as a retailer. It will not increase my costs of doing business or increase the cost of these products for the residents of San Francisco. If anything, it may lower my business costs as more products at all price points become available that are free of flame retardant chemicals.

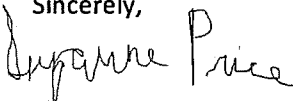
The ordinance would provide great comfort to my customers. Some flame retardants have been associated with serious health effects including cancer, reduced IQ, lower birthweight and neurobehavioral problems. These chemicals have no place in furniture and children's products.

This ordinance makes it possible for all families and retailers, regardless of their knowledge of this issue, to have products that do not contain these harmful and unnecessary chemicals. This is important to ensure that parents of all income levels can buy healthier products for their families. When parents are confident about the products they are considering, they are more likely to purchase the product and this is good for families and for San Francisco retailers.

The ordinance would also help rectify a commonly held, but incorrect assumption made by consumers. Consumers mistakenly think that, when the furniture flammability standard was changed, flame retardants were actually prohibited in these products and that all products are now flame retardant free. As a result, consumers are not aware that children's products can still contain these harmful chemicals. This ordinance would actually make that assumption accurate and protect families by ensuring that these children's products in fact do not contain these chemicals.

I am delighted that the City and County of San Francisco is seeking to restrict the use of these harmful and unnecessary chemicals. The proposed ordinance is an important way for San Francisco to help safeguard the health of our residents, especially children who are the most vulnerable and carry high body burdens of these chemicals. It would give me great pleasure to tell my customers that the products in my store, and indeed in all stores throughout the City and County of San Francisco, do not contain these chemicals.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Price".

Suzanne Price

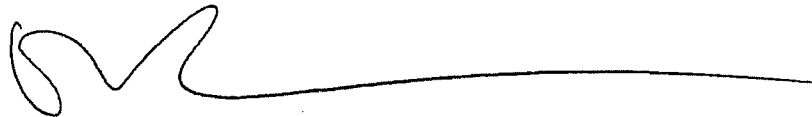
We, the undersigned businesses that operate in the City and County of San Francisco, are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco. As retailers of children's products in San Francisco, we want to provide products that are healthy for children. We know that parents are actively looking for products without harmful chemicals and the proposed ordinance would be a great help to my business and customers by restricting products that contain these unnecessary flame retardant chemicals.

This ordinance will not increase my costs of doing business or increase the cost of these products for customers in San Francisco. This ordinance makes it possible for all families, regardless of their knowledge of this issue, to have products that do not contain these unnecessary chemicals. It also ensures that parents of all income levels can buy healthier products for their families.

The proposed ordinance is an important way for San Francisco to help safeguard the health of our residents, especially children who are the most vulnerable and carry high body burdens of these chemicals. We look forward to the passage of this protective ordinance.

Business Name: MADAMUNDI KIDS

Name: ESTEBAN KERNER

A handwritten signature in black ink, appearing to be 'Esteban Kerner', written over a horizontal line.

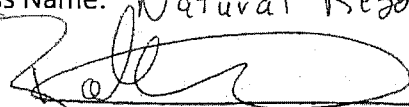
For more information please contact Judy Levin from Center for Environmental Health:

Judy@ceh.org

We, the undersigned businesses that operate in the City and County of San Francisco, are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco. As retailers of children's products in San Francisco, we want to provide products that are healthy for children. We know that parents are actively looking for products without harmful chemicals and the proposed ordinance would be a great help to my business and customers by restricting products that contain these unnecessary flame retardant chemicals.

This ordinance will not increase my costs of doing business or increase the cost of these products for customers in San Francisco. This ordinance makes it possible for all families, regardless of their knowledge of this issue, to have products that do not contain these unnecessary chemicals. It also ensures that parents of all income levels can buy healthier products for their families.

The proposed ordinance is an important way for San Francisco to help safeguard the health of our residents, especially children who are the most vulnerable and carry high body burdens of these chemicals. We look forward to the passage of this protective ordinance.

Business Name: Natural Resources
Name: 
Bob Williams, ES

For more information please contact Judy Levin from Center for Environmental Health:

Judy@ceh.org

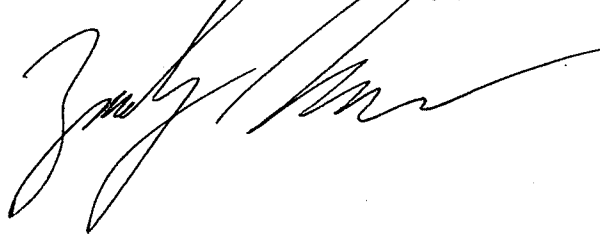
We the undersigned businesses that operate in the City and County of San Francisco are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco.

As furniture retailers, the proposed ordinance would help protect our workers and consumers and it does not pose a financial burden on our businesses. This ordinance would also not increase costs for consumers in any way. Chemical flame retardants are not necessary to meet the California furniture flammability standard and our consumers do not want these unnecessary in their furniture products.

We support this ordinance and look forward to its adoption.

Business Name: Cozy Couch

Name: Zach Morris

A handwritten signature in black ink, appearing to read 'Zach Morris', written over the printed name.

For more information please contact Judy Levin from Center for Environmental Health:

Judy@ceh.org

We the undersigned businesses that operate in the City and County of San Francisco are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco.

As furniture retailers, the proposed ordinance would help protect our workers and consumers and it does not pose a financial burden on our businesses. This ordinance would also not increase costs for consumers in any way. Chemical flame retardants are not necessary to meet the California furniture flammability standard and our consumers do not want these unnecessary in their furniture products.

We support this ordinance and look forward to its adoption.

Business Name: *Benchmark Modern*
Name: *Lisa Beach*

For more information please contact Judy Levin from Center for Environmental Health:

Judy@ceh.org

We the undersigned businesses that operate in the City and County of San Francisco are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco.

As furniture retailers, the proposed ordinance would help protect our workers and consumers and it does not pose a financial burden on our businesses. This ordinance would also not increase costs for consumers in any way. Chemical flame retardants are not necessary to meet the California furniture flammability standard and our consumers do not want these unnecessary in their furniture products.

We support this ordinance and look forward to its adoption.

Business Name: HARRINGTON GALLERY

Name:

Fiona O'Connor

For more information please contact Judy Levin from Center for Environmental Health:

Judy@ceh.org

We the undersigned businesses that operate in the City and County of San Francisco are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco.

As furniture retailers, the proposed ordinance would help protect our workers and consumers and it does not pose a financial burden on our businesses. This ordinance would also not increase costs for consumers in any way. Chemical flame retardants are not necessary to meet the California furniture flammability standard and our consumers do not want these unnecessary in their furniture products.

We support this ordinance and look forward to its adoption.

Business Name: *Faensworth.*

Name: *Antuanette Holder*

For more information please contact Judy Levin from Center for Environmental Health:

Judy@ceh.org


We the undersigned businesses that operate in the City and County of San Francisco are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco.

As furniture retailers, the proposed ordinance would help protect our workers and consumers and it does not pose a financial burden on our businesses. This ordinance would also not increase costs for consumers in any way. Chemical flame retardants are not necessary to meet the California furniture flammability standard and our consumers do not want these unnecessary in their furniture products.

We support this ordinance and look forward to its adoption.

Business Name: Bedroom & More

Name:


Eric Thompson

For more information please contact Judy Levin from Center for Environmental Health:

Judy@ceh.org



sustainable
FURNISHINGS COUNCIL
sustainablefurnishings.org

To the San Francisco Small Business Commission
Attn: President Mark Dwight and Small Business Commissioners
City Hall, Room 110
1, Dr. Carl B. Goodlett Place
San Francisco, CA 94102

2 October 2017

Dear San Francisco Small Business Commission and Board of Supervisors:

I am writing on behalf of nearly 400 Sustainable Furnishings Council member companies, most of which do business in San Francisco. We support the Proposed San Francisco Ordinance 170867 (Farrell): Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products.

We are in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco.

We are abundantly clear that the proposed ordinance would help protect workers and consumers and that it does not pose a financial burden on furnishings businesses. Further, this ordinance would not increase costs for consumers in any way. Chemical flame retardants are not necessary to meet the California furniture flammability standard and our consumers do not want these unnecessary in their furniture products. In fact, Sustainable Furnishings Council consumer research shows that 88% of furniture consumers are worried that their homes are making them sick. They would rather not be exposed.

We support this ordinance and look forward to its adoption.

Sincerely,

SUSAN INGLIS

Susan Inglis, Executive Director, Sustainable Furnishings Council



November 2017

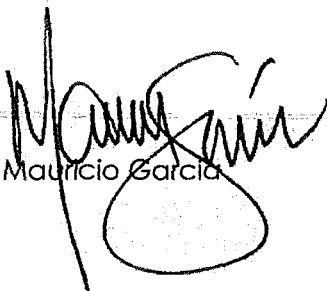
President Mark Dwight and
The San Francisco Small Business Commissioners;

My name is Mauricio Garcia and I'm the marketing and sales director for Roche Bobois San Francisco, we have been part of the local San Francisco community for more than 40 years.

I am in support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals in the City and County of San Francisco. As a furniture retailer, the proposed ordinance does not pose compliance challenges for our business. When the California furniture flammability regulation passed, Roche Bobois elected to remove flame retardant chemicals from all of our furniture products. We welcomed this change as we only had them in the upholstered furniture sold in California and do not want these chemicals in our products.

As required by California law, we label products as compliant with the furniture flammability regulation and check off the box that says that our product does not contain flame retardant chemicals. As this is the same requirement for the proposed San Francisco ordinance, this does not pose a financial burden on our business nor would this increase costs for consumers in any way.

We have heard from consumers that they do not want these flame retardant chemicals in their furniture and we are delighted that we can let consumers know that our furniture, and hopefully that in the future all furniture sold in the City and County of San Francisco, do not contain these unnecessary chemicals. We support this ordinance and urge its passage. Thank you for this opportunity to share our perspective.


Mauricio Garcia

ROCHE BOBOIS SAN FRANCISCO
701 8th St @ Townsend San Francisco CA 94103
Tel: 415.626.8613 www.roche-bobois.com

Room&Board

800.486.6554 | roomandboard.com

To:

San Francisco Small Business Commission
Attn: President Mark Dwight and Small Business Commissioners
City Hall, Room 110
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

From:

Room & Board, Inc.
4600 Olson Memorial Hwy
Minneapolis, MN 55422

Dear President Dwight and Small Business Commissioners,

We want to express our support of the proposed San Francisco ordinance that would ban the sale of upholstered furniture and juvenile products with flame retardant chemicals.

As a national furniture retailer with a store in San Francisco, we feel this ban helps protect our staff members and customers. Furthermore, it does not present a financial burden to our business or increase costs for our customers.

Chemical flame retardants are not necessary to meet the California furniture flammability standard TB 117-2013. In fact, in 2014 we eliminated flame retardant chemicals from our upholstered products and found chemical-free alternatives to meet the flammability standard. Our customers have responded very positively to this change.

We look forward to the adoption of this ordinance, and once again, express our strong support.

Sincerely,

Steve Freeman
Room & Board Vendor Resource Manager

Carroll, John (BOS)

From: Carroll, John (BOS)
Sent: Thursday, October 05, 2017 9:14 AM
To: 'Evan Bruning'
Cc: Andy Hackman; Board of Supervisors, (BOS)
Subject: RE: JPMA Letter - Flame Retardants - File Number 170867

Categories: 170867

Thanks for your comment letter.

I have added your message to the official file for the ordinance.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170867](#)

John Carroll

Assistant Clerk

Board of Supervisors

San Francisco City Hall, Room 244

San Francisco, CA 94102

(415)554-4445 - Direct | (415)554-5163 - Fax

john.carroll@sfgov.org | bos.legislation@sfgov.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

-----Original Message-----

From: Evan Bruning [mailto:EBruning@serlinhaley.com]
Sent: Wednesday, October 04, 2017 8:00 AM
To: Carroll, John (BOS) <john.carroll@sfgov.org>
Cc: Andy Hackman <AHackman@serlinhaley.com>
Subject: FW: JPMA Letter - Flame Retardants - File Number 170867

Dear Clerk Carroll,

In advance of the next Public Safety and Neighborhood Services Committee meeting, please find attached a letter from the Juvenile Products Manufacturers Association (JPMA) providing information and concerns on File Number 170867 - amending the Environment Code to ban the sale of upholstered furniture and juvenile products made with or containing an added flame retardant chemical in San Francisco.

Although we have already emailed it to their offices (see below), please ensure this ends up in their hands for the meeting.

Respectfully,

Evan Bruning
Government Relations Analyst
Serlin Haley LLP
Direct: (617) 830-5234
ebruning@serlinhaley.com
www.serlinhaley.com

-----Original Message-----

From: Andy Hackman
Sent: Friday, September 29, 2017 11:36 AM
To: Mark.Farrell@sfgov.org; Kanishka.Karunaratne@sfgov.org
Cc: Sandra.Fewer@sfgov.org; Hillary.Ronen@sfgov.org; Jeff.Sheehy@sfgov.org; Kelly Mariotti
Subject: JPMA Letter - Flame Retardants - File Number 170867

Dear Supervisor Farrell and Public Safety and Neighborhood Services Committee Members,

Attached please find a letter from the Juvenile Products Manufacturers Association (JPMA) providing information and concerns on File Number 170867 - amending the Environment Code to ban the sale of upholstered furniture and juvenile products made with or containing an added flame retardant chemical in San Francisco.

Juvenile product makers are prohibited by federal law from exposing a child to known chemical hazards that can cause harm, and in the area of flame retardants the industry has moved to eliminate their use - where not required by law. However, this proposed ordinance lacks clarity and would restrict broad classes of chemicals, while also creating a civil enforcement provision.

JPMA urges you and the Board of Supervisors to consider amendments to this legislation to remove the civil enforcement provision and add clarity to the restrictions for compliance purposes.

Respectfully,

Andrew R. Hackman
(202) 770-2231 direct
(202) 570-8526 cell
ahackman@serlinhaley.com

CONFIDENTIALITY NOTICE: This e-mail message (including any attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and is intended only for the person or entity to which it is addressed. Further, this e-mail from the law firm Serlin Haley LLP may be protected by attorney-client privilege and/or attorney work-product doctrine and is intended for the PERSONAL and CONFIDENTIAL use of the recipient named above. Any unauthorized review, use, disclosure, dissemination, copying, forwarding or distribution is strictly prohibited. If you are not the intended recipient, or received this e-mail in error, please contact the sender by reply e-mail, permanently delete the original e-mail message and any attachments from your system, and destroy all copies of the original message and attachments.



September 29, 2017

The Honorable Mark Farrell
San Francisco Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102-4689

Re: Draft Ordinance FILE NO. 170867 - Amending the Environment Code to ban the sale in San Francisco of upholstered furniture and juvenile products made with or containing any added flame retardant chemical

Dear Supervisor Farrell and Public Safety and Neighborhood Services Committee Members,

On behalf of the Juvenile Products Manufacturers Association (JPMA), I am writing in response to the introduction and pending action on File Number 170867 - amending the Environment Code to ban the sale of upholstered furniture and juvenile products made with or containing an added flame retardant chemical in San Francisco. Juvenile product makers are prohibited by federal law from exposing a child to known chemical hazards that can cause harm, and in the area of flame retardants we have moved to eliminate their use – where not required by law. However, this proposed ordinance lacks clarity and would restrict broad classes of chemicals, while also creating a civil enforcement provision. We urge you and the Board of Supervisors to amend this legislation to remove the civil enforcement provision and add clarity to the restrictions for compliance purposes.

The Juvenile Products Manufacturers Association is a national not-for-profit trade organization representing 95% of the prenatal to preschool industry including the producers, importers, or distributors of a broad range of childcare articles that provides protection to infants and assistance to their caregivers. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers, and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification, and business development assistance conducted with appreciation for the needs of parents, children, and retailers. JPMA partners with government officials, consumer groups, and industry leaders on programs to educate consumers on the safe selection and use of juvenile products.

Existing Regulation Preventing Exposure to Acute Toxic Chemicals:

The juvenile products industry is one of the most heavily regulated industries in the country. All nursery products sold in the United States must conform to stringent federal safety standards such as the Federal Hazardous Substances Act (FHSA), which

protects children from acute and chronic hazardous exposure to chemicals from children's products.

Under this regulatory framework, exposure to substances that present an acute or chronic hazard are already considered a banned hazardous substance under the FHSA. The FHSA prohibits a manufacturer from introducing into interstate commerce any "banned hazardous substance."¹ Section 2(q) of the FHSA², defines a "banned hazardous substance" to include "*any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted.*"³ The FHSA defines the term "hazardous substance" to mean, inter alia, "*[a]ny substance or mixture of substances which (i) is toxic..., if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.*"⁴

The FHSA defines "toxic" as "*any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.*"⁵ Together, these statutory provisions ban the sale of any children's product ("*any toy or other article intended for use by children*") containing sufficient levels of a toxic chemical to potentially cause substantial injury or illness through reasonably foreseeable ingestion, inhalation, or absorption. The CPSC has issued regulations to enforce these provisions, including regulations explaining the precise circumstances in which a substance qualifies as "toxic."⁶ CPSC's regulations sum up the requirements of federal law as follows: "*A toy or other article intended for use by children that contains an accessible and harmful amount of a hazardous chemical is banned.*"⁷

In this regard *the proposed* banning of substances by mere content, a) regardless of whether such content limits correlate to any hazard and b) regardless of whether there is a reasonable possibility that a child using the product would actually be exposed to the listed substances conflicts with the federal scheme of regulation. As a consequence, this legislation could unintentionally ban perfectly safe products that contain any level of the listed substances without regard to whether such action is actually necessary to ensure child health and safety. In addition, the CPSC has commenced Rulemaking to specifically regulate the very same substances sought to be regulated by this proposal.⁸ *This is why we oppose it in its current form.*

The FHSA also contains an express preemption clause stating that (subject to limited exception not relevant here) "*if under regulations of the Commission promulgated under*

¹ 15 U.S.C. § 1263(a).

² 15 U.S.C. § 1261(q)

³ 15 U.S.C. § 1261(q)(1)(A).

⁴ 15 U.S.C. § 1261(f)(A).

⁵ 16 C.F.R. § 1500.3(c)(2).

⁶ 15 U.S.C. § 1261(g).

⁷ 16 C.F.R. § 1500.231(c)(1).

⁸ US Consumer Product Safety Commission Vote on Petition HP-15-1 for Rulemaking on OFRs dated September 20, 2017.

or for the enforcement of section 2(q) [15 U.S.C. § 1261(q)] a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no

State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.”⁹ Therefore, there is the potential for state or local to be preempted from regulating substances in children’s products.

Ongoing Work to Eliminate Flame Retardants:

JPMA’s work with the U.S. Consumer Product Safety Commission (CPSC), the State of California, and other states demonstrates our commitment to safety and our willingness to work with all stakeholders to achieve regulations that benefit consumers and ensure and advance safety. For example, in the development and implementation of the revised California Technical Bulletin 117-2013, JPMA was actively engaged in the regulatory process and worked collaboratively with the California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (BEARHFTI), consumer groups, and environmental advocates to reach an agreement that juvenile products would be exempted from California’s strict flammability standard.

These exemptions provided manufacturers with the relief necessary to reduce or eliminate the required use of certain restricted flame retardant chemicals in many juvenile products, while affording consumers a wider choice of products to aid in the protection and care of their children. Since the implementation of TB117-2013, our manufacturers have moved away from the use of certain flame retardants identified as potentially hazardous in California since they are no longer required by law to meet the California’s flammability standard.

Private Civil Enforcement:

JPMA would also like to express strong concerns with Section 2804 (d) of the proposed ordinance that would establish a civil enforcement action right. As we have seen under Proposition 65, misapplied civil enforcement provisions are an extreme burden on businesses that sell products nationally into a jurisdiction. Oftentimes, without safeguards which specifically require certification of merit by a Board Certified Toxicologist of hazard and hazardous exposure, as a predicate to civil enforcement, frivolous lawsuits can result.

If this ordinance is adopted by the Board of Supervisors, JPMA strongly encourages the proposal to be amended and full enforcement authority remain vested in the Director and the Department of Environment – as stipulated in the majority of Section 2804.

Proposition 65 Compliance:

In addition to deferral to preemptive CPSC Rulemaking recently instituted, the appropriate authority within the State of California to determine specifically hazardous flame retardants is The Office of Environmental Health Hazard Assessment (OEHHA) is the lead state agency for the assessment of health risks posed by environmental contaminants. OEHHA’s mission is to protect human health and the environment through scientific evaluation of risks posed by hazardous substances. The Office is one

⁹ 15 U.S.C. § 1261 note, § (b)(1)(B).

of five state departments within the California Environmental Protection Agency (CalEPA).

OEHHA implements the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65, and compiles the state's list of substances that cause cancer or reproductive harm. The Office also develops health-protective exposure levels for contaminants in air, water, and soil as guidance for regulatory agencies and the public. These include public health goals for contaminants in drinking water and both cancer potency factors and non-cancer reference exposure levels for the Air Toxics Hot Spots Program. State expertise should be relied upon as a predicate to any action by the City's Department of Environment.

Conclusion:

Product safety is the top priority for JPMA and its' members. We appreciate the opportunity to discuss the proposed ordinance and our industry's role in ensuring safety for juvenile products.

JPMA respectfully requests that you and the Board of Supervisors consider and balance the need for action in light of OEHHA listings and Rulemaking by CPSC. At a minimum, amendments are needed to the proposed ordinance to clarify the scope of the chemicals impacted by the proposed ordinance and eliminate the private civil enforcement provision, per our concerns outlined above. Thank you for your consideration in this matter.

Respectfully Submitted,



Kelly Mariotti, JD, CPA, CAE
Executive Director

Cc: Public Safety and Neighborhood Services Committee Members

Carroll, John (BOS)

From: Carroll, John (BOS)
Sent: Monday, October 02, 2017 3:14 PM
To: Board of Supervisors, (BOS); BOS-Supervisors
Subject: RE: File No. 170867: Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products

Thanks for your comment letter.

I have added your message to the official file for the ordinance.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170867](#)

John Carroll

Assistant Clerk

Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
(415)554-4445 - Direct | (415)554-5163 - Fax
john.carroll@sfgov.org | bos.legislation@sfgov.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

From: Board of Supervisors, (BOS)
Sent: Monday, October 02, 2017 7:44 AM
To: BOS-Supervisors <bos-supervisors@sfgov.org>; Carroll, John (BOS) <john.carroll@sfgov.org>
Subject: FW: File No. 170867: Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products

From: Lacey, Louinda [<mailto:Louinda.Lacey@calchamber.com>]
Sent: Friday, September 29, 2017 1:56 PM
To: Farrell, Mark (BOS) <mark.farrell@sfgov.org>
Cc: Maltz, Martha <martha.maltz@calchamber.com>; Tibbett, Deanna <Deanna.Tibbett@calchamber.com>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Angie Manetti (amanetti@calretailers.com) <amanetti@calretailers.com>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Ronen, Hillary

<hillary.ronen@sfgov.org>; Sheehy, Jeff (BOS) <jeff.sheehy@sfgov.org>; Karunaratne, Kanishka (BOS) <kanishka.karunaratne@sfgov.org>

Subject: File No. 170867: Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products

Dear Honorable Mark Farrell,

Attached please find correspondence regarding File No. 170867, Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products. A hard copy will follow by U.S. mail.

Thank you for your consideration, and please do not hesitate to contact me with any questions.

Sincerely,
Louinda

Louinda V. Lacey
Policy Advocate



California Chamber of Commerce
1215 K Street, 14th Floor
Sacramento, CA 95814

T 916 444 6670
F 916 325 1272

Stay informed—[download](#) our free mobile apps!

Visit calchamber.com for the latest California business legislative news plus products and services to help you do business.

This email and any attachments may contain material that is confidential, privileged and for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient or have reason to believe you are not the intended recipient, please reply to advise the sender of the error and delete the message, attachments and all copies.

September 29, 2017

The Honorable Mark Farrell, Chair
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

RE: File No. 170867, Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products

Dear Supervisor Farrell:

We write to inform you of our deep concerns with the private enforcement provision in your recently introduced ordinance to ban the sale in San Francisco of certain items containing flame retardants, File No. 170867 (introduced July 25, 2017). This provision, section 2804(d), reads as if it were drafted by an activist organization seeking to initiate a new and self-sustaining program of suing businesses, akin to the veritable industry of private “bountyhunters” who generate millions in fees from the enforcement provisions of California’s infamous Proposition 65.

Section 2804(d), the text of which is attached for your ready reference, allows a small number of non-profit organizations -- those “with a primary mission of protecting human health and/or the environment in the San Francisco Bay Area” -- to sue businesses over alleged violations of the flame retardant ban. It establishes a process in which the activist organization can assume the mantle of the City Attorney and enforce this ordinance so long as it gives advance notice to the Director of the Department of the Environment and the City Attorney and they take no action. The activist organization obtains its attorney fees and costs if it prevails.

In effect, this provision out-sources enforcement of the ordinance to private organizations who may not have the public interest at heart and who certainly are not accountable to the citizens of San Francisco. The City Attorney, by contrast, is elected by and accountable to the citizenry. Furthermore, the Director of the Department of Environment is appointed by the Mayor and therefore accountable to the citizenry. These two city officials are empowered to enforce this ordinance, like many other ordinances, and there is no showing that this particular issue requires additional, unusual enforcement mechanisms that may enrich specific interest groups and their attorneys with no accountability to the public.

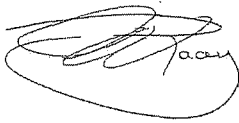
This private enforcement mechanism will combine with the onerous penalty provisions of this proposed ordinance to create an overwhelming incentive for businesses accused of violations to settle with their accusers rather than incur their own attorney fees, risk paying the private organization’s attorney fees, and risk civil penalties of up to \$1,000 per day per item offered for sale. An inadvertent but relatively large shipment of items that are on sale for a mere week before the mistake is caught could subject a small business to penalties that could bankrupt the business. While accountable city officials such as the Director of the Department of Environment and the City Attorney may generally be relied upon to apply the law in a reasonable manner and to not seek confiscatory penalties against legitimate business owners, there are no such guarantees with private, activist groups with a single-minded focus and a pecuniary incentive. The opportunities for shake-down threats of litigation, not to mention involvement

of the courts in matters that otherwise would be efficiently resolved in the administrative process, make this provision particularly unwise.

This private enforcement provision would extend the bad precedent set in the Safe Drug Disposal Stewardship Ordinance and lead to an even more discouraging environment for businesses, and especially retailers, in San Francisco. The City has successfully addressed numerous issues of far greater significance to public health and safety using traditional enforcement methods directed by responsible and accountable public officials. There is no reason that this particular issue warrants such a novel and problematic approach as private enforcement.

We urge you to revise this proposed ordinance to remove this unusual and unwarranted provision.

Sincerely,



Louinda V. Lacey
California Chamber of Commerce
louinda.lacey@calchamber.com
(916) 444-6670



Angie Manetti
California Retailers Association
amanetti@calretailers.com
(916) 443-1975

cc: Members, Public Safety and Neighborhood Services Committee

File No. 170867 [Environment Code -- Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products]

Sec. 2804(d) The City Attorney or any organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting human health and/or the environment in the San Francisco Bay Area may bring a civil action to enjoin a violation of or compel compliance with any requirement of this Chapter 28 or any rule or regulation adopted pursuant to this Chapter 28, as well as for payment of civil penalties and any other appropriate remedy. The court shall award reasonable attorney fees and costs to the City Attorney or nonprofit organization that is the prevailing party in a civil action brought under this Chapter 28. A nonprofit organization may institute a civil action under this subsection (e) only if:

- (1) The nonprofit organization has filed a complaint with the Director;
- (2) 90 days have passed since the filing of the complaint;
- (3) After such 90-day period, the nonprofit organization provides written notice to the Director and the City Attorney's Office of its intent to initiate civil proceedings;
- (4) The Director has not issued a determination that there has been no violation of any requirement of this Chapter 28; and
- (5) The City Attorney's Office has not provided written notice to the nonprofit organization of the City's intent to initiate civil proceedings within 30 days of receipt of the written notice from the nonprofit organization referenced in subsection (d)(3).

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Deborah Raphael, Director, Department of the Environment

FROM: John Carroll, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: August 2, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Farrell on July 25, 2017:

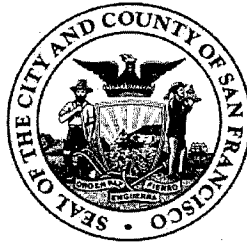
File No. 170861

Ordinance amending the Environment Code to ban the sale in San Francisco of upholstered furniture and juvenile products made with or containing an added flame retardant chemical.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Guillermo Rodriguez, Department of the Environment

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: August 2, 2017

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 170867

Ordinance amending the Environment Code to ban the sale in San Francisco of upholstered furniture and juvenile products made with or containing an added flame retardant chemical.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment
 Recommendation Attached

Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business Commission

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2017 OCT -3

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [170867]
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Farrell

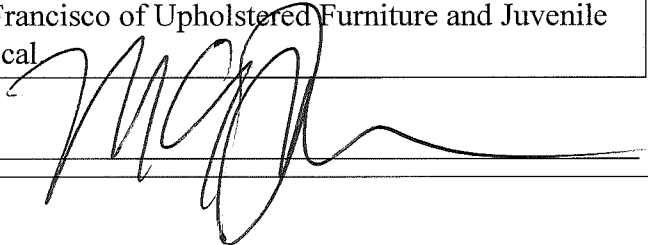
Subject:

Environment Code - Flame Retardant Chemicals in Upholstered Furniture and Juvenile Products

The text is listed below or attached:

Ordinance amending the Environment Code to ban the sale in San Francisco of Upholstered Furniture and Juvenile Products made with or containing an added Flame Retardant Chemical

Signature of Sponsoring Supervisor: _____



For Clerk's Use Only: