

1 [Healthy Products, Healthy Children Ordinance.]

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3 **Ordinance amending the San Francisco Health Code by re-numbering and amending**  
4 **Sections 34.1 through 34.3 and adding new Sections 34.1, 34.2, and 34.6 through 34.9,**  
5 **to: re-state the ban on toys, child care products, and child feeding products made with**  
6 **certain phthalates; repeal the ban on toys, child care products, and child feeding**  
7 **products made with Bisphenol-A, pending State action; add a new title and findings;**  
8 **provide for implementation and enforcement, including administrative and criminal**  
9 **penalties; and, add disclaimer of liability and severability clauses.**

10 Note: Additions are *single-underline italics Times New Roman*;  
11 deletions are *strikethrough italics Times New Roman*.  
12 Board amendment additions are double underlined.  
13 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. The San Francisco Health Code is hereby amended by re-numbering and  
16 amending Sections 34.1 through 34.3 and adding new Sections 34.1, 34.2, and 34.6 through  
17 34.9, to read as follows:

18 **SEC. 34.1. FINDINGS.**

19 **Phthalates**

20 *(a) Phthalates are a family of chemicals that are used as an additive in a number of consumer*  
21 *products and are used to make plastics flexible for use in children's toys, shower curtains, medical*  
22 *supplies, and building materials.*

23 *(b) Phthalate additives are not bound tightly within the plastic and may leach out of the*  
24 *product. Leaching may occur especially as a result of mechanical stress such as chewing or bending,*  
25 *and upon exposure to fats, saliva and warm temperatures.*

1           (c) Phthalates have been shown to cause reproductive harm including genital defects, sperm  
2 damage, reduced testosterone production, and premature deliveries.

3           (d) Government agencies and scientific bodies in the European Union (EU) have recognized  
4 the potential harm of six specific types of phthalates: DEHP, DBP, BBP, DINP, DIDP, and DNOP  
5 especially to infants and young children; and as a result, these chemicals are banned from use in  
6 children's products in the EU.

7           (e) The United States Consumer Product Safety Commission has established a voluntary  
8 program to eliminate one type of phthalate, DEHP, from children's toys.

9           (f) Studies and testing indicate that regardless of this voluntary phase-out, toys sold in the  
10 United States still contain DEHP, especially toys made from PVC plastic.

11           (g) Consumers are not able to make informed purchasing decisions regarding children's  
12 products because there is no requirement to list phthalates content on product labels.

13 **Bisphenol-A**

14           (h) Bisphenol-A (BPA) is a building block of polycarbonate plastic used in such products as  
15 clear plastic baby bottles and water bottles, and in other materials such as the epoxy resin coatings  
16 that line food containers.

17           (i) BPA has been shown to leach out of the polycarbonate plastic upon exposure to heat and  
18 mechanical scrubbing and has been detected in the liquid contained in plastic bottles that had been  
19 exposed to heat.

20           (j) Scientific studies have shown that BPA at very low doses can affect brain chemistry and  
21 structure, behavior, the immune system, enzyme activity, the male reproductive system, and the female  
22 reproductive system in a variety of animals, including snails, fish, frogs, and mammals.

1           (k) Scientific bodies within the US government and the European Union have concluded that  
2 animal studies such as those carried out on BPA are a vital guide to identifying health risks for  
3 humans.

4           (l) BPA mimics the hormone estrogen and is therefore considered to be an endocrine disruptor.  
5 The hormone systems of young children are uniquely susceptible to low doses of estrogenic substances.

6           (m) Consumers are not able to make informed purchasing decisions regarding children's  
7 products because there is no requirement to list BPA content on product labels.

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9           **SEC. 34.2. TITLE; PREAMBLE.**

10           (a) This Chapter may be known as the "Healthy Products, Healthy Children Ordinance."

11           (b) In response to concerns about the scope and implementation of Ordinance No. 120-06  
12 expressed by the San Francisco Department of Public Health following the measure's adoption in June  
13 2006, the Board of Supervisors hereby amends the ordinance to focus on child care products and toys  
14 likely to be placed in children's mouths and containing specified phthalates and on child feeding  
15 products containing specified phthalates. The Board further urges the State of California to take action  
16 to prohibit or restrict the sale of children's products containing Bisphenol-A, subject to further possible  
17 legislative action by the City should no such protective action be taken by the State.

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19           **SEC. 34.3. 34.1. DEFINITIONS PROHIBITING THE SALE OF TOYS AND CHILD CARE**  
20 **ARTICLES MADE WITH BISPHENOL-A.**

21           (a) Bisphenol A, an estrogen mimicking endocrine disrupter chemical, is used in the  
22 production of epoxy resins and poly carbonate plastics and is the main ingredient in hard  
23 polycarbonate plastics. The plastics are used in many food and drink packaging applications, and the

1 *resins are commonly used as lacquers to coat metal products such as food cans, bottle tops, and water*  
2 *supply pipes.*

3 *(b) Bisphenol A has been shown to have hormone disrupting effects and is used in many*  
4 *products designed for children, including, but not limited to, toys, pacifiers, baby bottles, and teething.*

5 *(c) No person or entity shall manufacture, sell, or distribute in commerce within the City and*  
6 *County of San Francisco any toy or child care article intended for use by a child under three years of*  
7 *age if that product has been made with or contains bisphenol A.*

8 (d) For the purposes of this Chapter, the following terms have the following meanings:

9 (1) (i) "Toy" means a product ~~an article~~ designed and made for the amusement of a  
10 child or for his or her use in play and likely to be placed in a child's mouth.

11 (2) (ii) "Child care product ~~article~~" means a product ~~all products~~ designed or intended by  
12 the manufacturer to help children ~~facilitate~~ sleep or relax ~~relaxation, or the feeding of children~~ or to  
13 help children with sucking or teething, and likely to be placed in a child's mouth.

14 (3) "Child feeding product" means a product designed or intended by the manufacturer to  
15 facilitate the feeding of children. A "child feeding product" shall not include any medical device.

16

17 **SEC. 34.4. ~~34.2.~~ PROHIBITING THE SALE OF TOYS, ~~AND~~ CHILD CARE PRODUCTS**  
18 **ARTICLES, AND CHILD FEEDING PRODUCTS MADE WITH PHTHALATES.**

19 *(a) No person or entity shall manufacture, sell, or distribute in commerce within the City any*  
20 *toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has*  
21 *been made with or contains di (2-ethylhexyl) phthalate (DEHP) in concentrations exceeding 0.1*  
22 *percent.*

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1           (b) No person or entity shall manufacture, sell, or distribute in commerce within the City any  
2 toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has  
3 been made with or contains di butyl phthalate (DBP) in concentrations exceeding 0.1 percent.

4           (c) No person or entity shall manufacture, sell, or distribute in commerce within the City any  
5 toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has  
6 been made with or contains benzyl butyl phthalate (BBP) in concentrations exceeding 0.1 percent.

7           (d) No person or entity shall manufacture, sell, or distribute in commerce within the City any  
8 toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has  
9 been made with or contains diisononyl phthalate (DINP) in concentrations exceeding 0.1 percent.

10           (e) No person or entity shall manufacture, sell, or distribute in commerce within the City any  
11 toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has  
12 been made with or contains diisodecyl phthalate (DIDP) in concentrations exceeding 0.1 percent.

13           (f) No person or entity shall manufacture, sell, or distribute in commerce within the City any  
14 toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has  
15 been made with or contains di-n --octyl phthalate (DnOP) in concentrations exceeding 0.1 percent.

16           ~~(a) Phthalates are chemicals used to plasticize some food containers, plastic wrap, toys,~~  
17 ~~shampoos, perfumes, and beauty products.~~

18           ~~(b) Phthalates have been shown to have hormone disrupting effects. However, they are used in~~  
19 ~~many products intended for use by young children, including, but not limited to, toys, pacifiers, baby~~  
20 ~~bottles, and teethers.~~

21           ~~(c) No person or entity shall manufacture, sell, or distribute in commerce within the City and~~  
22 ~~County of San Francisco any toy or child care article that is made with or contains di (2-ethylhexyl)~~  
23 ~~phthalate (DEHP), di butyl phthalate (DBP), or benzyl butyl phthalate (BBP) in concentrations~~  
24 ~~exceeding 0.1 percent.~~

1           ~~(d) No person or entity shall manufacture, sell, or distribute in commerce within the City and~~  
2 ~~County of San Francisco any toy or child care article intended for use by a child under three years of~~  
3 ~~age if that product can be placed in the child's mouth and has been made with or contains diisononyl~~  
4 ~~phthalate (DINP), diisodecyl phthalate (DIDP), or di n-octyl phthalate (DnOP) in concentrations~~  
5 ~~exceeding 0.1 percent.~~

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7   **SEC. 34.5. ~~34.3.~~ LEAST-TOXIC ALTERNATIVES.**

8           (a) Manufacturers within the City and County of San Francisco shall use the least  
9 toxic alternative when replacing ~~bisphenol A and~~ phthalates in accordance with this Chapter.

10           (b) Manufacturers shall not replace ~~bisphenol A and~~ phthalates pursuant to this  
11 Chapter with carcinogens rated by the United States Environmental Protection Agency as A,  
12 B, or C carcinogens, or substances listed as known or likely carcinogens, known to be human  
13 carcinogens, likely to be human carcinogens, as described in the "List of Chemicals Evaluated  
14 for Carcinogenic Potential," or known to the State of California to cause cancer as listed in the  
15 California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of  
16 the California Health and Safety Code).

17           (c) Manufacturers shall not replace ~~bisphenol A and~~ phthalates pursuant to this  
18 Chapter with reproductive toxicants that cause birth defects, reproductive harm, or  
19 developmental harm as identified by the United States Environmental Protection Agency or  
20 listed in the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270)  
21 of Part 12 of the California Health and Safety Code).

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23   **SEC. 34.6. IMPLEMENTATION AND ENFORCEMENT.**

1           (a) The Department of Public Health, in consultation with the Department of the Environment,  
2 shall compile and promulgate a list of specific products covered by the provisions of Section 34.4,  
3 focusing on toys and child care products likely to be placed in a child's mouth, such as teething rings,  
4 and child feeding products, such as bottles, plates, or pacifiers. This list shall be updated on an on-  
5 going basis as information becomes available and resources permit.

6           (b) Within 18 months of the adoption of the ordinance creating this Chapter, the Department of  
7 Public Health, in consultation with the Department of the Environment, shall develop an  
8 implementation plan that includes publicizing the list of proscribed products and notifying merchants  
9 and other parties of their responsibilities under the Chapter.

10           (c) Six months after a product has been placed on the Department of Public Health's list of  
11 proscribed products under subsection (a), the manufacture, sale, or distribution in commerce within the  
12 City of such product may be punished by administrative penalties in the amount of \$100 for the first  
13 violation, \$250 for the second violation within a twelve-month period, and \$500 for the third and  
14 subsequent violations within a twelve-month period.

15           (d) Twelve months after a product has been placed on the Department of Public Health's list of  
16 proscribed products under subsection (a), the manufacture, sale, or distribution in commerce within the  
17 City of such product shall be a misdemeanor, punishable by a fine of up to \$1,000, imprisonment in the  
18 county jail for a term not to exceed six months, or both..

19           (e) For purposes of subsections (c) and (d), each individual item that is manufactured, sold, or  
20 distributed in commerce contrary to the provisions of this Chapter shall constitute a separate violation.  
21 For purposes of this Chapter, "distribution in commerce," "distribute in commerce," or "distributed in  
22 commerce" shall include offering items for sale, whether or not an actual sale of the item occurs.

23           (f) Any person or entity who manufactures, sells, or distributes in commerce within the City any  
24 toy or child care product likely to be placed in a child's mouth, or any child feeding product, shall  
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1 advise the Department of the Environment of all information in its possession, custody, or control that  
2 reasonably may demonstrate that the product has been made with or contains the phthalates listed in  
3 Section 34.4 in concentrations exceeding 0.1 percent.

4 (g) The Department of Public Health, in consultation with the Department of the Environment,  
5 may issue rules and regulations necessary or appropriate for the implementation and enforcement of  
6 this Chapter.

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8 **SEC. 34.7. TOYS, CHILD CARE PRODUCTS, AND CHILD FEEDING PRODUCTS MADE**  
9 **WITH BISPHENOL-A.**

10 The Board of Supervisors and the Department of Public Health urge the State of California to  
11 continue its investigations into the health effects of Bisphenol-A and to identify safer alternatives to its  
12 use, especially in toys, child care products, and child feeding products.

13 If, by January 1, 2008, the State of California has not banned or significantly restricted the use  
14 of Bisphenol-A in toys, child care products, and child feeding products, the Department of Public  
15 Health shall recommend to the Board of Supervisors amendments to this Chapter to prohibit the  
16 manufacture, sale, or distribution in commerce within the City of such products and the Board of  
17 Supervisors shall conduct hearings on the adoption of those amendments.

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19 **SEC. 34.8. DISCLAIMER.**

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



1     **SEC. 34.9. SEVERABILITY.**

2             If any of the provisions of this Chapter or the application thereof to any Person or circumstance  
3     is held invalid, the remainder of those provisions, including the application of such part or provisions  
4     to persons or circumstances other than those to which it is held invalid, shall not be affected thereby  
5     and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

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7     APPROVED AS TO FORM:  
8     DENNIS J. HERRERA, City Attorney

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By:     \_\_\_\_\_  
          THOMAS J. OWEN  
          Deputy City Attorney

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