

1 [Healthy Products, Healthy Children Ordinance.]

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

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

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

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

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**SEC. 34.1. FINDINGS.**

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**Phthalates**

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

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

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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 have been  
19 exposed to heat.

20 (j) BPA mimics the hormone estrogen and is therefore considered to be an endocrine  
21 disruptor. The hormone systems of young children are uniquely susceptible to low doses of  
22 estrogenic substances. Scientific studies have shown that BPA at very low doses can affect brain  
23 chemistry and structure, behavior, the immune system, enzyme activity, the male reproductive system,  
24 and the female 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, but have thus far concluded that no restrictions on BPA in consumer products are  
4 warranted at this time.

5            (l) There is some uncertainty in the available scientific evidence, and The Department  
6 of Public Health and Department of the Environment should will continue to monitor emerging  
7 literature on the potential health effects of exposure to BPA.

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

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11 **SEC. 34.2. TITLE; PREAMBLE.**

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

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

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

23            (a) Bisphenol A, an estrogen mimicking endocrine disrupter chemical, is used in the  
24 production of epoxy resins and poly carbonate plastics and is the main ingredient in hard

1 ~~polycarbonate plastics. The plastics are used in many food and drink packaging applications, and the~~  
2 ~~resins are commonly used as lacquers to coat metal products such as food cans, bottle tops, and water~~  
3 ~~supply pipes.~~

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

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

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

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

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

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

19 (4) "Distribution in commerce, "distribute in commerce," or "distributed in commerce"  
20 shall include offering items for sale, whether or not an actual sale of the item occurs.

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

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1           (a) 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 (2-ethylhexyl) phthalate (DEHP) in concentrations exceeding 0.1  
4 percent.

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

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

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

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

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

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

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

1           ~~(c) 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 that is made with or contains di (2-ethylhexyl)~~  
3 ~~phthalate (DEHP), di butyl phthalate (DBP), or benzyl butyl phthalate (BBP) in concentrations~~  
4 ~~exceeding 0.1 percent.~~

5           ~~(d) 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 can be placed in the child's mouth and has been made with or contains diisononyl~~  
8 ~~phthalate (DINP), diisodecyl phthalate (DIDP), or di n octyl phthalate (DNOP) in concentrations~~  
9 ~~exceeding 0.1 percent.~~

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

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

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

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

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4 **SEC. 34.6. IMPLEMENTATION AND ENFORCEMENT.**

5 (a) Within 18 months of the adoption of the ordinance creating this Chapter, the  
6 Department of Public Health, in consultation with the Department of the Environment, shall compile  
7 and promulgate a list of specific products covered by the provisions of Section 34.4, focusing on toys  
8 and child care products likely to be placed in a child's mouth, such as teething rings, rubber ducks,  
9 plastic books, and child feeding products, such as bottles, plates, or pacifiers. This list shall be  
10 updated on an on-going basis as information becomes available and resources permit, and shall be  
11 posted in Departmental web sites.

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

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

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

1           (e) For purposes of subsections (c) and (d), each individual item that is manufactured, sold, or  
2 distributed in commerce contrary to the provisions of this Chapter shall constitute a separate violation.

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

8           (g) The Department of Public Health, in consultation with the Department of the Environment,  
9 shall may issue rules and regulations necessary or appropriate for the implementation and  
10 enforcement of this Chapter. The regulations shall describe the roles of City agencies and the  
11 responsibilities of retailers, distributors, and manufacturers of toys, child care products, and  
12 child feeding products doing business in the City. The Department may, shall by regulation,  
13 require retailers and distributors of toys, child care products, and child feeding products doing  
14 business in the City to take reasonable steps to obtain and forward to the Department  
15 information from manufacturers regarding the phthalate content of such products.

16           (h) Violations of any Departmental regulations issued pursuant to this Article may be  
17 punished by administrative penalties in the amount of \$100 for the first violation, \$250 for the  
18 second violation of the same regulation within a twelve-month period, and \$500 for the third  
19 and subsequent violations of the same regulation within a twelve-month period.

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



1            The Board of Supervisors urges the State of California to continue its investigations into the  
2 health effects of Bisphenol-A and to identify safer alternatives to its use, especially in toys, child care  
3 products, and child feeding products.

4            If, by January 1, 2008, the State of California has not banned or significantly restricted the use  
5 of Bisphenol-A in toys, child care products, and child feeding products, the Department of Public  
6 Health, in consultation with the Department of the Environment, shall make recommendations  
7 to the Board of Supervisors on regulating the manufacture, sale, or distribution in commerce within  
8 the City of such products and the Board of Supervisors shall conduct hearings on those  
9 recommendations.

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11        **SEC. 34.8. DISCLAIMER.**

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

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17        **SEC. 34.9. SEVERABILITY.**

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

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

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4 By: \_\_\_\_\_  
5 THOMAS J. OWEN  
6 Deputy City Attorney

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