

[Warning on Cough and Cold Medicine for Infants and Young Children Ordinance.]

**Ordinance amending the San Francisco Health Code by adding Article 36, sections 3601 through 3609, to: (1) require businesses located in the City and County of San Francisco to post point-of-sale warnings on administering cough and cold medicine to infants and children younger than 2 years, and (2) provide penalties for violations.**

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~~.

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

Section 1. Findings.

(a) The City and County of San Francisco has a duty to protect the health of its citizens.

(b) Cough and cold medications have not been shown to be beneficial in reducing symptoms or duration of illness and are associated with significant harm (including death) in infants and young children. The US Food and Drug Administration (FDA) has advised healthcare professionals to exercise caution when administering cough and cold medications to children younger than 2 years.

(c) No well-controlled scientific studies support the efficacy and safety of narcotics (including codeine) or dextromethorphan as antitussives (cough suppressants) in infants and young children. Indications for their use in infants and young children have not been established. In a systematic review of randomized controlled trials evaluating the efficacy of cough and cold medications in children, antitussives, antihistamine-decongestant combinations, and antihistamines alone showed no difference in effectiveness compared to placebos.

1 (d) Suppression of coughing in pulmonary airway diseases may be hazardous and  
2 contraindicated. Coughing helps clear mucus from an infant's airway. Infant deaths have  
3 occurred from the administration of over-the-counter (OTC) or prescription cough and cold  
4 medications.

5 (e) There are no FDA-approved dosing recommendations for OTC cough and cold  
6 medications to children younger than 2 years. Dosage guidelines for children are  
7 extrapolated from adult data and clinical experience, and thus are imprecise for children.

8 (f) Adverse effects and overdosage associated with administration of cough and  
9 cold preparations in children have been reported.

10 (g) Coughing due to acute viral airway infections is short-lived and may be treated  
11 with fluids and humidity. A rubber suction bulb may be used to clear congestion from the  
12 nose and saline nose drops should also be considered as an alternative to medication for  
13 infants and young children.

14 (h) Education of patients and parents about the lack of proven antitussive effects  
15 and potential risks of cough and cold medications is needed.

16 Section 2. The San Francisco Health Code is hereby amended by adding Article 36,  
17 Sections 3601 through 3609, to read as follows:

18 **SEC. 3601. SHORT TITLE.**

19 *This Ordinance shall be entitled the "Child Cough and Cold Medicine Warning Ordinance."*

20 **SEC. 3602. DEFINITIONS.**

21 *For the purposes of this Ordinance, the following words shall have the following meanings:*

22 (a) *"Business" means a fixed location within the City and County of San Francisco, whether*  
23 *indoors or outdoors, at which merchandise is offered for sale at retail and that is required to obtain a*  
24 *valid San Francisco business registration certificate from the San Francisco Tax Collector's office.*

1           **(b) "Cough or Cold Medicine" means drugs available "over the counter" or "OTC" and**  
2 **without a doctor's prescription that are used to suppress coughs and/or reduce symptoms associated**  
3 **with colds and includes nasal decongestants, antitussives, and antihistamines ingested orally.**

4           **(c) "Department" means the Department of Public Health.**

5           **(d) "Director" means the Director of the Department of Public Health.**

6           **(e) "Person" means an individual, trust, firm, joint stock company, corporation,**  
7 **cooperative, partnership, or association.**

8           **SEC. 3603. WARNING REQUIRED AT POINT OF SALE.**

9           **All owners, managers, and proprietors in charge of businesses selling, or displaying for the**  
10 **purpose of sale, cough or cold medicines, shall post a warning sign in a manner that is prominent and**  
11 **accessible at the point of product selection. Such sign shall be printed on a black background with**  
12 **white text and in a legible manner with a depiction of a baby's face inside a circle with a slash through**  
13 **it next to the following: "0-2". Such sign shall be in English, Spanish, and Chinese conveying the**  
14 **following warning:**

15           **"WARNING: These products have caused illness and death in children under 2 years. BEFORE**  
16 **USE, talk to your child's doctor first."**

17           **The warning must be legible and easily readable by the average person to the naked eye.**

18           **SEC. 3604. IMPLEMENTATION.**

19           **The Director, after a public hearing, may adopt and may amend guidelines, rules, regulations,**  
20 **and forms to implement this Ordinance. When businesses post a warning sign, they do so to comply**  
21 **with City law and are not offering health care advice. Therefore, such businesses are not responsible**  
22 **for the consumers' actions regarding the purchase of cold or cough medicines.**

23           **SEC. 3605. ENFORCEMENT AND PENALTIES.**

1           (a)     The Director shall investigate, or cause to be investigated, all complaints made to the  
2           Department regarding the violation of any of the provisions of this Ordinance.

3           (b)     Any person who violates this Ordinance shall be guilty of an infraction. If charged as an  
4           infraction, upon conviction thereof, said person shall be punished by (1) a fine not exceeding \$100.00  
5           for a first violation, (2) a fine not exceeding \$200.00 for a second violation within the same year, and  
6           (3) a fine not exceeding \$500.00 for each additional violation within the same year. A person who  
7           violates the provisions of Section 3603 is guilty of a separate offense for each day, or portion thereof,  
8           during which the violation continues.

9           (c)     In the event that the City adopts an ordinance creating a procedure for the City  
10          Administrator to impose and review Administrative Penalties pursuant to California Government Code  
11          Section 53069.4, the City may impose Administrative Penalties for violation of this Ordinance as  
12          follows: (1) in an amount not exceeding \$100.00 for the first violation, (2) in an amount not exceeding  
13          \$200.00 for the second violation in the same year, and (3) in an amount not exceeding \$500.00 for each  
14          subsequent violation in the same year.

15          (d)     The City may not recover both administrative and civil penalties for the same violation.

16          **SEC. 3606. OPERATIVE DATE.**

17          This Ordinance shall become operative on January 1, 2008.

18          **SEC. 3607. SEVERABILITY.**

19          If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held  
20          to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
21          shall not affect the validity of the remaining portions of the Ordinance. The Board of Supervisors  
22          hereby declares that it would have passed this Ordinance and each and every section, subsection,  
23          sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any  
24          portion of this Ordinance would be subsequently declared invalid or unconstitutional.

1     **SEC. 3608. NO CONFLICT WITH FEDERAL OR STATE LAW.**

2             *Nothing in the Ordinance shall be interpreted or applied so as to create any requirement,*  
3     *power, or duty in conflict with any federal or state law.*

4     **SEC.3609. UNDERTAKING FOR THE GENERAL WELFARE.**

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

9  
10    APPROVED AS TO FORM:  
11    DENNIS J. HERRERA, City Attorney

12    By: \_\_\_\_\_  
13        Aleeta M. Van Runkle  
14        Deputy City Attorney