Amendment of the Whole in Board 4/10/07

FILE NO. 070078  ORDINANCE NO. 86-07

[Healthy Products, Healthy Children Ordinance.]

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.

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. 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:

SEC. 34.1. FINDINGS.

Phthalates

(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.

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

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

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

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

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

**Bisphenol-A**

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

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

(j) BPA mimics the hormone estrogen and is therefore considered to be an endocrine disruptor. The hormone systems of young children are uniquely susceptible to low doses of endowgetic substances. Scientific studies have shown that BPA at very low doses can affect brain chemistry and structure, behavior, the immune system, enzyme activity, the male reproductive system, and the female reproductive system in a variety of animals, including snails, fish, frogs, and mammals.
(k) Scientific bodies within the US government and the European Union have concluded that animal studies such as those carried out on BPA are a vital guide to identifying health risks for humans, but have thus far concluded that no restrictions on BPA in consumer products are warranted at this time.

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

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

SEC. 34.2. TITLE; PREAMBLE.

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

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

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

(a) Bisphenol-A, an estrogen-mimicking endocrine disrupter chemical, is used in the production of epoxy resins and poly carbonate plastics and is the main ingredient in hard
polycarbonate plastics. The plastics are used in many food and drink packaging applications, and the resins are commonly used as lacquers to coat metal products such as food cans, bottle tops, and water supply pipes.

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

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

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

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

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

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

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

SEC. 34.4. 34.2. PROHIBITING THE SALE OF TOYS, AND CHILD CARE PRODUCTS ARTICLES, AND CHILD FEEDING PRODUCTS MADE WITH PHTHALATES.
(a) No person or entity shall manufacture, sell, or distribute in commerce within the City any toy, child care product, or child feeding product listed by the City pursuant to Section 34.6 which has been made with or contains di (2-ethylhexyl) phthalate (DEHP) in concentrations exceeding 0.1 percent.

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

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

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

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

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

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

(b) Phthalates have been shown to have hormone-disrupting effects. However, they are used in many products intended for use by young children, including, but not limited to, toys, pacifiers, baby bottles, and teethers.
(e) No person or entity shall manufacture, sell, or distribute in commerce within the City and County of San Francisco any toy or child care article that is made with or contains di (2-ethylhexyl) phthalate (DEHP), di butyl phthalate (DBP), or benzyl butyl phthalate (BBP) in concentrations exceeding 0.1 percent.

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

SEC. 34.5. 34.3 LEAST-TOXIC ALTERNATIVES.

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

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

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

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

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

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

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

(d) Twelve months after a product has been placed on the Department of Public Health’s list of proscribed products under subsection (a), the manufacture, sale, or distribution in commerce within the City of such product shall be a misdemeanor, punishable by a fine of up to $1,000, imprisonment in the county jail for a term not to exceed six months, or both.
(e) For purposes of subsections (c) and (d), each individual item that is manufactured, sold, or distributed in commerce contrary to the provisions of this Chapter shall constitute a separate violation.

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

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

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

SEC. 34.7. TOYS, CHILD CARE PRODUCTS, AND CHILD FEEDING PRODUCTS MADE WITH BISPHENOL-A.
The Board of Supervisors urges the State of California to continue its investigations into the health effects of Bisphenol-A and to identify safer alternatives to its use, especially in toys, child care products, and child feeding products.

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

SEC. 34.8. DISCLAIMER.

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

SEC. 34.9. SEVERABILITY.

If any of the provisions of this Chapter or the application thereof to any Person or circumstance is held invalid, the remainder of those provisions, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By:  

THOMAS J. OWEN
Deputy City Attorney
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.

April 10, 2007 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

April 10, 2007 Board of Supervisors — PASSED ON FIRST READING AS AMENDED
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

April 17, 2007 Board of Supervisors — FINALLY PASSED
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

April 17, 2007 Board of Supervisors — FINALLY PASSED
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Jew, Maxwell, McGoldrick, Mirkarimi, Peskin
Absent: 1 - Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on April 17, 2007 by the Board of Supervisors of the City and County of San Francisco.

Kay Gulbengay
Interim Clerk of the Board

APR 17 2007
Date Approved

Mayor Gavin Newsom