

Submitted by: ASSEMBLY MEMBER LAFRANCE
ASSEMBLY CHAIR CROFT
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Prepared by: Assembly Counsel
For reading: January 15, 2019

ANCHORAGE, ALASKA
AO No. 2019-15

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY TO PROTECT**
2 **THE HEALTH OF CHILDREN AND FIREFIGHTERS BY AMENDING THE**
3 **ANCHORAGE MUNICIPAL CODE TO ADD A NEW CHAPTER 15.100, *CONSUMER***
4 ***PRODUCTS*, AND A NEW SECTION TO PROHIBIT CERTAIN CONSUMER**
5 **PRODUCTS CONTAINING FLAME RETARDANT CHEMICALS HARMFUL TO**
6 **HUMAN HEALTH AND DEVELOPMENT.**
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8
9 **WHEREAS**, certain flame retardant chemicals are added to many consumer
10 products, including children's products, toys, and furniture, and are harmful to human
11 health. The manufacturing industry has generally phased out the commercial use of
12 polybrominated diphenyl ethers (PBDE) flame retardants, and replaced them with use
13 of alternative chemicals such as organohalogenated, organophosphorous and
14 organonitrogen flame retardants (collectively, "toxic flame retardants"); and
15

16 **WHEREAS**, the known adverse health effects of these chemicals to consumers
17 include: reproductive impairment (e.g., abnormal gonadal development, reduced
18 number of ovarian follicles, reduced sperm count, and increased time to pregnancy);
19 neurological impacts (e.g., decreased IQ in children, impaired memory, learning
20 deficits, altered motor behavior, and hyperactivity); endocrine disruption and
21 interference with thyroid hormone action (potentially contributing to diabetes and
22 obesity); genotoxicity; cancer; and immune disorders; and
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24 **WHEREAS**, scientific studies show that the addition of non-polymer flame retardant
25 chemicals to consumer products does not provide proven fire safety benefits, and
26 they make the products more hazardous while in use and more toxic if they do catch
27 fire; and
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29 **WHEREAS**, the United States Centers for Disease Control and Prevention (CDC)
30 has identified harmful toxic flame retardants in the bodies of more than 90% of
31 Americans; and
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33 **WHEREAS**, research has found infants, children, pregnant women, firefighters,
34 indigenous communities, and people with compromised immune systems and
35 chemical sensitivities are especially vulnerable to toxic flame retardant chemical
36 exposures and effects; and
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38 **WHEREAS**, firefighters are at particular risk for exposure to carcinogenic flame
39 retardants and associated combustion products (such as dioxins and furans) through
40 inhalation, absorption, and ingestion. Recent studies show that firefighters have up
41 to three times the levels of these chemicals in their bodies than the general
42 population, and a National Institute for Occupational Safety and Health (NIOSH)

1 study of cancer incidence among 30,000 career firefighters found higher rates of
2 several types of cancer; and

3
4 **WHEREAS**, the federal Consumer Product Safety Commission (CPSC) began a
5 rulemaking process in 2017 to ban the use of the entire class of organohalogen flame
6 retardants from children’s toys and child care articles, mattresses and mattress pads,
7 upholstered household furniture, and the outer plastic casings for electronics; and

8
9 **WHEREAS**, the CPSC issued a public warning and guidance requesting that
10 manufacturers of the products “eliminate the use of such chemicals in these
11 products.” The CPSC also determined “These chemicals have a disproportionately
12 negative health effect on vulnerable populations, including children”; and

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14 **WHEREAS**, the federal Toxic Substances Control Act of 1976 (TSCA) was recently
15 amended by Congress by the Frank R. Lautenberg Chemical Safety for the 21st
16 Century Act of 2016 (LCSA), 15 U.S.C. § 2601 *et seq.*, to streamline toxicity
17 guidelines and promote a national framework for chemical substances regulation, but
18 includes a ceiling preemption provision barring states and municipalities from
19 regulating chemicals more strictly than the Environmental Protection Agency. The
20 EPA has not yet acted to restrict use of or regulate any additive flame retardants
21 under this enactment. The federal rulemaking may take years to complete, so it is
22 incumbent upon local jurisdictions and states to take more immediate action to enact
23 measures to protect the health of their residents from toxic flame retardants,
24 particularly children and firefighters at risk of exposure; and

25
26 **WHEREAS**, numerous local governments are taking leadership in protecting their
27 residents by passing legislation to phase out the use of toxic flame retardants in
28 consumer products where better alternatives exist; and

29
30 **WHEREAS**, forty policies have been passed by thirteen states and local governments
31 and forty more policies are being considered in seventeen additional jurisdictions;
32 and

33
34 **WHEREAS**, retailers and manufacturers around the nation are phasing these
35 chemicals out of their products and producing safe alternatives at no higher cost; and

36
37 **WHEREAS**, Alaskans are at higher risk from exposure to flame retardants due to the
38 amount of time residents spend indoors in highly insulated and low ventilation areas.
39 The inhalation and ingestion of household dust is an important route of exposure.
40 Toddlers aged 1-4 years of age have about three times higher levels of toxic flame
41 retardants in their blood compared with their mothers. Alaskans also receive higher
42 exposures as a result of the global distillation process that transports chemicals
43 northward, such as toxic flame retardants, where they concentrate in our northern
44 and Arctic region; and

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46 **WHEREAS**, birth defects in Alaska are twice as high as the national average, and
47 Alaska Native infants have twice the incidence of birth defects as non-Native infants
48 in Alaska; and

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2 **WHEREAS**, people have a right not to be involuntarily exposed to flame retardant
3 chemicals and to be informed so they can make safer purchasing choices; and
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5 **WHEREAS**, the Municipality has demonstrated its commitment to defending young
6 children against harmful neurotoxic chemicals through the Healthy Babies, Bright
7 Futures “Bright City” program and through the Children’s Environmental Health
8 proclamation of 2016 and 2018; now, therefore,
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10 **THE ANCHORAGE ASSEMBLY ORDAINS:**

11
12 **Section 1.** Anchorage Municipal Code is amended by adding a new chapter
13 15.100 to read as follows:
14

15 CHAPTER 15.100 – CONSUMER PRODUCTS

16 Sections

17
18 **15.100.010 Flame retardant chemicals – prohibition.**

19 A. After January 1, 2020 no person shall manufacture, sell, offer for sale,
20 or distribute any covered product that contains, or a constituent
21 component of which contains, a prohibited flame retardant chemical at
22 levels above 1,000 parts per million.
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24

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26 1. For purposes of this subsection, any consumer product safety
27 standard adopted under federal law that establishes allowable
28 levels of a prohibited flame retardant chemical that covered
29 products may contain is presumed to establish the maximum
30 allowable level of the chemical that may be used in children's
31 products that are sold or offered for sale in the municipality, and
32 the federally established level is hereby incorporated by
33 reference and may be enforced under this section.
34

35 B. Prohibited flame retardant chemicals include, but are not limited to, any
36 chemical that meets both of the following criteria:
37

38 1. A functional use for the chemical is to resist or inhibit the spread
39 of fire, or as a synergist to such chemicals, including, but not
40 limited to, any chemical for which the term “flame retardant,” or
41 a synonymous term, appears on the Occupational Safety and
42 Health Administration substance safety data sheet pursuant to
43 subdivision (g) of Section 1910.1200 of Title 29 of the Code of
44 Federal Regulations as it read on January 1, 2019.
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46 2. The chemical is one of the following:
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48 a. a halogenated, organophosphorous, organonitrogen, or
49 nanoscale flame retardant chemical;

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- b. the penta or octa mixtures of polybrominated diphenyl ethers, the deca mixture of polybrominated diphenyl ethers (PBDEs), or decabromodiphenyl ether (chemical abstracts service number 1163-19-5);
- c. antimony (chemical abstracts service number 7440-36-0);
- d. a chemical defined as a “designated chemical” under Section 105440 of the California Health and Safety Code; or
- e. a chemical listed on the Washington State Department of Ecology's list of Chemicals of High Concern to Children in Section 173-334-130 of Title 173 of the Washington Administrative Code as of January 1, 2019, and identified as a flame retardant or as a synergist to flame retardants in the rationale for inclusion in the list.

C. Replacement of regulated flame retardants. A manufacturer of a covered product shall not replace or substitute, and a distributor or retailer shall not sell or offer to sell a covered product in which a manufacturer replaced or substituted, a chemical flame retardant whose use is prohibited under subsection B with a chemical that is:

- 1. classified as “known to be a human carcinogen” or “reasonably anticipated to be a human carcinogen” in the most recent report on carcinogens by the National Toxicology Program in the U.S. Department of Health and Human Services;
- 2. classified as “carcinogenic to humans” or “likely to be carcinogenic to humans” in the U.S. Environmental Protection Agency’s most recent list of chemicals evaluated for carcinogenic potential;
- 3. identified by the U.S. Environmental Protection Agency or the National Institutes of Health as causing birth defects, hormone disruption, neurotoxicity, or harm to reproduction or development; or
- 4. otherwise identified on the basis of credible, peer-reviewed scientific evidence by any state, federal, or international agency as being known or suspected with a high degree of probability to:
 - a. harm the normal development of a fetus or child or cause other developmental toxicity;
 - b. cause cancer, genetic damage, or reproductive harm;
 - c. disrupt the endocrine or hormone system; or

1 d. damage the nervous system, immune system, or organs,
2 or cause other systemic toxicity.
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4 D. The prohibitions contained in this section shall not apply to the
5 following:
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7 1. the sale, offer for sale, or distribution of a covered product by a
8 retailer who purchased or acquired the product before January
9 1, 2020;

10 2. any transactional activity involving a covered product that occurs
11 subsequent to the first sale at retail; or
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13 3. a person granted a waiver from compliance with the prohibitions
14 of this section by the department, so long as the waiver is in
15 effect.
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18 E. Labeling. A manufacturer of a covered product that is sold, offered for
19 sale, or distributed in the municipality shall place on a label affixed to
20 the product a statement substantially in the following form: "The
21 materials in this product contain [or do not contain] added flame
22 retardant chemicals."
23

24 F. Proof of compliance; waivers.
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26 1. A person who distributes, sells or offers to sell a covered
27 product in the municipality may demonstrate compliance with
28 this section by retaining and making available for inspection
29 upon request a written statement from the product manufacturer
30 or supplier attesting that the covered product does not contain a
31 prohibited flame retardant chemical. The department may
32 accommodate other reasonable means of demonstrating
33 compliance.
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35 2. A person who manufactures, distributes, sells, or offers to sell a
36 covered product in the municipality may apply to the director in
37 writing for a waiver from strict compliance with this section. The
38 application shall describe the scope and duration of the waiver
39 requested, and demonstrate that strict compliance shall cause
40 undue hardship, practical difficulty to the applicant, or is not
41 feasible. The director shall respond in writing within 60 days,
42 and may inform the applicant that additional time is needed to
43 consider the application, not to exceed 120 additional days. An
44 application for a waiver may be granted in whole or in part, and
45 shall be crafted narrowly to address the basis for the request.
46 The director's decision to grant or deny the application shall be
47 in writing and state it is a final decision. The director may
48 revoke a waiver granted under this subsection at any time if the
49 director determines the application was made in bad faith,

1 contained false information, or the grounds for the application
2 for the waiver have ceased to exist.

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4 G. Definitions. The following definitions apply to this section:

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6 *Covered product* means upholstered furniture, reupholstered furniture,
7 or juvenile products, any component, internal or external, of which has been
8 made with or contains a flame retardant chemical. Covered products do not
9 include:

- 10 1. used or second-hand furniture that is not reupholstered, or
11 2. used or second-hand Juvenile Products; or
12 3. products that are not primarily intended for use in the home,
13 such as products or components for motor vehicles, watercraft,
14 aircraft, or other vehicles.

15
16 *Establishment* means any store, stand, booth, concession, or any other
17 business enterprise that engages in the sale of covered products in the
18 municipality, and/or in the business of reupholstering residential furniture in
19 the municipality.

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21 *Halogenated chemical* means any chemical that contains one or more
22 halogen elements, including fluorine, chlorine, bromine, or iodine.

23
24 *Juvenile product* means a new, not a previously owned, product
25 designed for residential use by infants and children under 12 years of age,
26 including but not limited to a bassinet, booster seat, changing pad, floor play
27 mat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant
28 swing, infant walker, nursing pad, nursing pillow, playpen side pad, portable
29 hook-on chair, stroller, and children's nap mat.

30
31 *Manufacturer* means a person who, in the course of business,
32 1. manufactures a covered product;
33 2. affixes a brand name to a covered product; or
34 3. is the importer or first distributor in the United States of a
35 covered product that was imported into the United States and if
36 the person who manufactured or assembled the covered
37 product or whose brand name is affixed to the covered product
38 does not do business in the United States; in this subparagraph,
39 "distributor" means a person who sells covered products on a
40 wholesale basis.

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42 *Organophosphorus chemical* means any chemical that contains one or
43 more carbon elements and one or more phosphorus elements.

44
45 *Organonitrogen chemical* means any chemical that contains one or
46 more carbon elements and one or more nitrogen elements.

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48 *Reupholstered furniture* means furniture whose original fabric, padding,
49 decking, barrier material, foam and/or other resilient filling has been replaced

by an establishment and that has not been sold since the time of such replacement.

Upholstered furniture means new, not previously owned seating made with soft materials including but not limited to fabric, padding, decking, barrier material, foam, and/or other resilient filling.

H. Penalties. Any person who violates subsection A., C., or E. is subject to a civil penalty as set forth in Section 14.60.030, or, if no penalty is included in Section 14.60.030, a civil penalty not to exceed \$300.00 for each day of the violation.

Section 2. Anchorage Municipal Code section 14.60.030 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

14.60.030 - Fine schedule.

The fine schedule under this chapter is as follows:

Code Section	Offense	Penalty / fine
* * *	* * *	* * *
<u>15.100.010A.</u> <u>or C..</u>	<u>Manufacture, sell, offer to sell, or distribute a covered product with a prohibited flame retardant chemical or substitute chemical</u>	<u>300.00</u>
<u>15.100.010E.</u>	<u>Failure to label covered product</u>	<u>300.00</u>
* * *	* * *	* * *

(AO No. 93-167(S-1), § 1, 4-13-94; AO No. 94-108, § 1, 10-5-94; AO No. 94-134, § 2, 9-8-94; AO No. 95-42, § 2, 3-23-95; AO No. 95-67(S), § 9, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-118, § 3, 9-1-95; AO No. 95-163(S), § 21, 8-8-95; AO No. 95-195(S-1), 1-1-96; AO No. 96-51(S-1), § 2, 8-1-96; AO No. 96-96(S-1), § 2, 2-1-97; AO No. 96-126(S), § 3, 10-1-96; AO No. 96-137(S), § 9, 1-2-97; AO No. 97-88, § 3, 6-3-97; AO No. 97-107, § 3, 11-17-97; AO No. 97-133(S), § 1, 11-11-97; AO No. 98-27(S-1), § 2, 11-11-97; AO No. 98-160, § 2, 12-8-98; AO No. 99-13(S), 2-9-99; AO No. 99-91(S), § 4, 7-13-99; AO No. 2000-64, § 1, 4-18-00; AO No. 2000-116(S), § 4, 7-18-00; AO No. 2000-127(S), § 2, 10-14-00; AO No. 2000-129(S), § 26, 11-21-00; AO No. 2001-48, § 1, 3-13-01; AO No. 2001-74(S), § 2, 4-17-01; AO No. 2001-4, § 2, 2-6-01; AO No. 2001-145(S-1), § 11, 12-11-01; AO No. 2003-68, § 1, 9-30-03; AO No. 2003-97, § 4, 9-30-03; AO No. 2003-117, § 2, 1-28-03; AO No. 2003-130, § 8, 10-7-03; AO No. 2003-152S, § 10, 1-1-04; AO No. 2004-1, § 2, 1-1-03; AO No. 2004-99, § 2, 6-22-04; AO No. 2004-100(S-1), § 6, 1-1-05; AO No. 2004-171, § 1, 1-11-05; AO No. 2005-160, § 9, 11-1-05; AO No. 2005-84(S), § 3, 1-1-06; AO No. 2005-185(S), § 35, 2-28-06; AO No. 2005-124(S-1A), § 33,

1 4-18-06; AO No. 2006-39, § 6, 4-11-06; AO No. 2006-54, § 1, 5-2-06; AO No.
2 2006-80, § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO No. 2007-60, § 4, 11-
3 1-07; AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-15-08; AO No.
4 2009-61, § 3, 7-7-09; AO No. 2009-82, § 5, 7-7-09; AO No. 2009-40(S), § 3, 7-
5 21-09; AO No. 2009-112, § 4, 10-13-09; AO No. 2009-122, § 2, 12-17-09; AO-
6 2010-35(S), § 7, 5-11-10; AO No. 2010-39, § 2, 5-11-10; AO No. 2010-87(S),
7 § 3, 12-7-10; AO No. 2011-46, § 4, 4-12-11; AO No. 2011-59, § 10, 5-24-11;
8 AO No. 2011-106(S), § 3, 11-8-11; AO No. 2011-112, § 4, 11-22-11, eff. 12-
9 22-11; AO No. 2012-10, § 1, 1-31-12; AO No. 2012-77, § 29, 8-7-12; AO No.
10 2013-109(S-1), § 5, 12-3-13; AO No. 2013-130(S-1), § 1, 1-14-14; AO No.
11 2014-42, § 31, 6-21-14; AO No. 2014-85, § 4, 8-5-14; AO No. 2014-110(S), §
12 2, 9-9-14; AO No. 2014-137(S), § 3, 11-18-14; AO No. 2015-23(S), § 20, 3-
13 24-15; AO No. 2015-48, § 16, 5-14-15 ; AO No. 2015-54, § 1, 5-26-15 ; AO
14 No. 2015-65, § 4, 6-9-15 ; AO No. 2015-111(S-1), § 2, 1-1-16 ; AO No. 2016-
15 16(S), § 4, 2-9-16 ; AO No. 2016-76(S), § 7, 7-12-16 ; AO No. 2016-81(S), §
16 4, 8-25-16 ; AO No. 2016-83(S), § 9, 7-26-16 ; AO No. 2016-82 , § 3, 8-9-16;
17 AO No. 2016-116 , § 2, 10-18-16; AO No. 2016-115(S) , § 2, 11-15-16; AO
18 No. 2016-124(S) , § 11, 12-20-16; AO No. 2017-26 , § 2, 5-1-17; AO No.
19 2017-29(S) , § 61, 6-1-17; AO No. 2017-30 , § 3, 3-21-17; AO No. 2017-31(S)
20 , § 5, 5-26-17; AO No. 2017-119(S) , § 4, 11-9-17; AO No. 2017-101 , § 2, 2-5-
21 18; AO No. 2017-161(S) , § 3, 2-27-18)

22
23 **Section 3.** This ordinance shall be effective immediately upon passage and
24 approval by the Assembly.

25
26 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
27 _____, 2019.

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32 _____
Chair

33 ATTEST:

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36 _____
37 Municipal Clerk
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