

Submitted by: ASSEMBLY MEMBER LAFRANCE  
ASSEMBLY CHAIR CROFT  
ASSEMBLY MEMBER DUNBAR  
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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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

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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

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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

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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:**

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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.  
23  
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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.  
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35 B. Prohibited flame retardant chemicals include, but are not limited to, any  
36 chemical that meets both of the following criteria:  
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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."  
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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.

20  
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.

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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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