The New York City Council

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Title: A Local Law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of citywide environmental purchasing.

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Indexes:

Attachments: 1. Change of Committee Assignment Memo, 2. Committee Report 2/15/05, 3. Hearing Transcript 2/15/05, 4. Committee Report 9/26/05, 5. Hearing Transcript 9/26/05, 6. Committee Report 12/20/05, 7. Hearing Transcript 12/20/05, 8. Fiscal Impact Statement - A, 9. Hearing Transcript - Stated Meeting 12/21/05, 10. Local Law, 11. FY 17 - Annual Report on the City's Environmental Purchasing Standards

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12/20/2005	A	Committee on Contracts	Approved by Committee	Pass
12/21/2005	A	City Council	Approved by Council	Pass
12/21/2005	A	City Council	Sent to Mayor by Council	
12/29/2005	A	Mayor	Hearing Held by Mayor	
12/29/2005	A	Mayor	Signed Into Law by Mayor	
12/30/2005	A	City Council	Recved from Mayor by Council	

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Int. No. 534-A

By Council Members DeBlasio, Gennaro, Avella, Brewer, Clarke, Fidler, Gerson, James, Liu, Lopez, Martinez, Nelson, Palma, Quinn, Recchia Jr., Sanders Jr., Seabrook, Stewart, Weprin, Koppell, Moskowitz, Barron, Perkins, McMahon, Foster, Reyna, Monserrate, Yassky, Gonzalez, Gioia, Gentile, Katz, Reed, Jackson, The Speaker (Council Member Miller) and The Public Advocate (Ms. Gotbaum)

A Local Law to amend the administrative code of the city of New York, in relation to environmental purchasing and the establishment of a director of citywide environmental purchasing.

Be it enacted by the Council as follows:

Section 1. Statement of findings and purpose. In almost every category of goods, there are some products that are environmentally preferable to others. In many instances, there is little or no additional cost associated with the environmentally preferable option. For example, there is little cost difference between paper with no recycled content and paper with thirty percent post-consumer recycled content. Similarly, environmentally preferable indoor paints are readily available from all major paint manufacturers.

Many levels of government have established environmental purchasing programs. The federal government, for example, requires all federal agencies, subject to price and other considerations, to purchase goods with a minimum percentage of recovered material according to guidelines developed by the United States Environmental Protection Agency. In addition, federal agencies are required by Executive Order 13101 and the Federal Acquisition Regulation to assess and give preference to those products and services that are environmentally preferable. States such as California, Massachusetts, Michigan, Minnesota, Ohio and Pennsylvania have also developed extensive environmental procurement programs, as have many local governments. Environmental purchasing programs take into account numerous factors, including the production of waste, energy and water use, greenhouse gas emissions, indoor air quality, recycled and reused content and the presence of hazardous substances.

The Council finds that the purchase of environmentally preferable products will protect the environment by reducing the City's energy consumption, air pollution, hazardous releases and water use. Accordingly, the Council declares it is reasonable and necessary to require the establishment of a citywide director of

environmental purchasing.

§2. The administrative code of the city of New York is amended by adding a new chapter 3 to title 6 to read as follows:

CHAPTER 3

ENVIRONMENTAL PURCHASING

SUBCHAPTER 1

GENERAL PROVISIONS

§6-301 Definitions.

§6-302 Applicability.

§6-303 Exemptions and waivers.

§6-301 **Definitions.** a. For the purposes of this chapter only, the following terms shall have the following meaning:

(1) "Agricultural wastes" means materials that remain after the harvesting or production of annual crops, including but not limited to rice, flax, wheat and rye.

(2) "Architectural coatings" means any coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. This term shall not include the following: marine-based paints and coatings; coatings or materials to be applied to metal structures, such as bridges; or coatings or materials labeled and formulated for application in roadway maintenance activities.

(3) "Capital project" means a capital project as defined in section 210 of the charter that is paid for in whole or in part from the city treasury.

(4) "Carpet" means any fabric used as a floor covering, but such term shall not include artificial turf.

(5) "Carpet adhesive" means any substance used to adhere carpet to a floor by surface attachment.

(6) "Carpet cushion" means any kind of material placed under carpet to provide softness when it is

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walked upon.

(7) "Cathode ray tube" means any vacuum tube, typically found in computer monitors, televisions and oscilloscopes, in which a beam of electrons is projected on a phosphorescent screen.

(8) "City's environmental purchasing standards" or "city environmental purchasing standard" means any standards set forth in this chapter and any directives, guidelines or rules promulgated by the director.

(9) "Composite wood or agrifiber products" means plywood, particleboard, chipboard, medium density fiberboard, standard fiberboard, orient strand board, glu-lams, wheatboard or strawboard.

(10) "Construction work" means any work or operations necessary or incidental to the erection, demolition, assembling or alteration of any building, but such term shall not include minor repairs.

(11) "Contractor" means any person or entity that enters into a contract with any agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such contract.

(12) "Copier" means any device that makes paper copies of text or graphic material.

(13) "Covered electronic device" means: (i) any cathode ray tube, any product containing a cathode ray tube, any liquid crystal display (LCD), plasma screen or other flat panel television or computer monitor or similar video display product, any battery containing lead, cadmium, lithium or silver, any computer central processing unit that contains one or more circuit boards and includes any desktop computer or any laptop computer, any computer peripherals including, but not limited to, any keyboard, mouse and other pointing device, printer, scanner, facsimile machine and card reader, and any copier, but not including any automobile, household appliance, large piece of commercial or industrial equipment containing a cathode ray tube, a cathode ray tube product, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or any device used by emergency response personnel; or (ii) any other electronic device designated by the director.

(14) "CPG" means the Comprehensive Procurement Guideline for Products Containing Recovered

Materials, as set forth in part 247 of title 40 of the United States code of federal regulations.

(15) “Desktop computer” means any personal computer or workstation designed to operate only on alternating current power and to reside on or under a desktop.

(16) “Desktop-derived server” means any computer designed to provide services to other computers on a network and that contains an EPS12V or EPS1U form factor power supply.

(17) “Director” means the director of citywide environmental purchasing.

(18) “Electronic product environmental assessment tool” means a tool for evaluating the environmental performance of electronic products throughout their life cycle developed by the federal government and other stakeholders.

(19) “End-of-life management” means promoting the recycling or reuse of a product through features of the product or materials from which the product is manufactured.

(20) “ENERGY STAR labeled” means a designation indicating that a product meets the energy efficiency standards set forth by the United States environmental protection agency and the United States department of energy for compliance with the ENERGY STAR program.

(21) "Flow rate" means the volume, mass, or weight of water flowing past a given point per unit of time.

(22) “Green cleaning product" means any environmentally preferable cleaning product whose use has been determined to be feasible through the pilot program established pursuant to the local law that added subchapter 6 of this chapter or through any other testing and evaluation conducted by the director.

(23) “Hazardous substance” means any substance that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

(24) “Incandescent lamp” means any lamp in which a filament is heated to incandescence by an electric current to produce visible light.

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(25) "Lamp" means any glass envelope with a gas, coating, or filament that produces visible light when electricity is applied, but such term shall not include automotive light bulbs.

(26) "Local area network" means any two or more computers and associated devices that share a common communications line or wireless link and typically share the resources of a single processor or server within a small geographic area.

(27) "Minor repairs" means replacement of any part of a building for which a permit issued by the department of buildings is not required by law, where the purpose and effect of such work or replacement is to correct any deterioration or decay of or damage to such building or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

(28) "Persistent, bioaccumulative and toxic chemicals" means those chemicals that are toxic to living organisms, persist in the environment and build up in the food chain. This definition shall include any substance on the United States environmental protection agency's list of priority chemicals published under the national partnership for environmental priorities, as well as hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers.

(29) "Postconsumer material" means a material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is a part of the broader category of recovered materials.

(30) "Power supply" means any device intended to convert line voltage alternating current to one or more lower voltages of direct current.

(31) "Printer" means any device that prints the text or graphics output of a computer onto paper.

(32) "Reasonably competitive" means at a cost not exceeding that permissible under section 104-a of the general municipal law.

(33) "Recovered material" means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and

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commonly reused within, an original manufacturing process. For purposes of purchasing paper and paper products, "recovered material" includes "post-consumer recovered paper" and "recovered materials, for purposes of purchasing paper and paper products", as those terms are defined in the CPG.

(34) "Recycled product" shall mean recycled product as defined in section 104-a of the general municipal law.

(35) "Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, as specified in part 51.100 of chapter 40 of the United States code of federal regulations.

§6-302 **Applicability.** a. Except where otherwise provided, the provisions of this chapter shall apply to any product:

(1) purchased or leased by any agency;

(2) purchased or leased by any contractor pursuant to any contract with any agency where the director has designated such contract as one subject to this chapter in whole or in part; or

(3) purchased or leased by any contractor pursuant to any contract with any agency for construction work in any building; provided that this paragraph shall only require that such contractors meet the requirements of subdivisions a, b and c of section 6-313 and subdivisions a and b of section 6-306 of this chapter. Notwithstanding the foregoing, except when otherwise determined by the director, this paragraph shall not apply to any such contract:

(i) subject to green building standards pursuant to subdivision b of section 224.1 of the charter;

(ii) subject to energy efficiency standards pursuant to subdivision c of section 224.1 of the charter; provided, however, that this exception shall only apply to the purchase of energy using products and to the extent the purchase or lease of any such products is necessary for compliance with such subdivision;

(iii) subject to water efficiency standards pursuant to subdivision d of section 224.1 of the charter;

provided, however, that this exception shall only apply to the purchase of water using products;

(iv) where construction work is for a portion of a building that is less than fifteen thousand (15,000) square feet;

(v) where construction work is in any building or portion of a building leased by the city; provided, however, that this subparagraph shall not apply to any product purchased or leased by any contractor pursuant to any contract with any agency for construction work that (1) is a capital project and (2) is in a building or portion of a building that is leased for the use of a single agency where such single agency's lease is for more than fifty thousand (50,000) square feet of space; or

(vi) where the commissioner of the department of citywide administrative services determines that the requirements of this paragraph will result in significant difficulty in finding a suitable site for an agency facility and that such a circumstance could materially adversely affect the health, safety, or welfare of city residents.

b. Notwithstanding subparagraph (v) of paragraph 3 of subdivision a of this section, for any building where any single agency leases less than fifty thousand (50,000) but more than fifteen thousand (15,000) square feet of space, the contracting agency shall nonetheless make good faith efforts to apply subdivisions a, b and c of section 6-306 and subdivisions a and b of section 6-313 of this chapter to any capital construction work.

§6-303 **Exemptions and waivers**. a. This chapter shall not apply:

(1) to any product purchased or leased before the effective date of the local law that added this chapter;

(2) to any procurement where federal or state funding restrictions precludes the city from imposing the requirements of this chapter;

(3) to small purchases pursuant to section three hundred fourteen of the charter;

(4) to emergency procurements pursuant to section three hundred fifteen of the charter;

(5) to intergovernmental purchases pursuant to section three hundred sixteen of the charter;

(6) where compliance with the city's environmental purchasing standards would conflict with the purpose of chapter 3 of title 25 of this code;

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(7) to any product if there are fewer than three manufacturers that produce such product meeting the city's environmental purchasing standards and that are capable of producing any such product in a quantity and within a time period that are adequate for the city's needs;

(8) where the contracting agency finds that the inclusion of a specification otherwise required by sections 6-306 or 6-310 of this chapter would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that in making any such finding the contracting agency shall consider life-cycle cost-effectiveness; and

(9) where the contracting agency finds that the inclusion of a specification otherwise required by subchapters 5 or 6 of this chapter would not be consistent with such agency's ability to obtain the highest quality product at the lowest possible price through a competitive procurement, provided that in making any such finding the contracting agency shall consider the health and safety benefits of such specification.

b. The city's environmental purchasing standards may be waived by the director upon application by any agency:

(1) where compliance with the city's environmental purchasing standards would conflict with any consumer, health or safety:

(i) regulation of any agency; or

(ii) requirement of the federal government or state of New York or any nationally recognized testing laboratory designated by the director; or

(2) for any product if there are fewer than five manufacturers that produce such product meeting the city's environmental purchasing standards and that are capable of producing any such product in a quantity and within a time period that are adequate for the city's needs.

c. Any application for any waiver pursuant to this section shall be made in writing by the applying agency. The director shall, within a reasonable period of time, issue a written determination on whether to grant any such waiver application and shall include an explanation of any such determination.

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d. Except as otherwise provided in this chapter, the director may exempt from the provisions of this chapter up to the following total dollar amounts, provided such amounts shall be indexed to inflation beginning in the second year after the effective date of this local law, of contracts for goods or construction work in the following fiscal years if in his or her judgment such exemption is in the best interests of the city:

(1) for fiscal years 2007 and 2008, one hundred million dollars ($100,000,000);

(2) for fiscal year 2009, seventy-five million dollars ($75,000,000); and

(3) for fiscal year 2010 and any fiscal year thereafter, fifty million dollars ($50,000,000).

SUBCHAPTER 2

OVERSIGHT OF ENVIRONMENTAL PURCHASING

§6-304 Director of citywide environmental purchasing.

§6-305 Agency implementation.

§6-304 **Director of citywide environmental purchasing**. There shall be a director of citywide environmental purchasing who shall:

a. develop, establish, as appropriate, by promulgation of rules and implement environmental purchasing standards, in addition to those set forth in this chapter, the purpose of which shall be to: conserve energy and water; increase the use of recycled and reused materials; reduce hazardous substances, with an emphasis on persistent, bioaccumulative and toxic chemicals; decrease greenhouse gas emissions; improve indoor air quality; promote end-of-life management; and reduce waste;

b. at least once every two years, review and, if necessary, update or revise the city's environmental purchasing standards;

c. when promulgating any rules pursuant to this chapter, consider, as appropriate, any available scientific evidence, or specifications, guidelines or rules of other governmental agencies or organizations supporting the establishment of environmental purchasing standards, as well as the electronic product environmental assessment tool;

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d. partner, as appropriate, with other levels of government or jurisdictions to establish joint environmental purchasing standards, including working with and encouraging state agencies that supervise contracts from which the city purchases goods pursuant to paragraph five of subdivision a of section 6-303 of this chapter to meet or exceed any relevant city environmental purchasing standard;

e. monitor agency compliance with the city's environmental purchasing standards; and

f. submit an annual report to the speaker of the council and the mayor by October 1 of each year detailing the city's progress in meeting the purposes of this chapter, as specified in subdivision a of this section, and the city's environmental purchasing standards, which report shall at a minimum include:

(1) the total value of goods contracts entered into by any agency that comply with one or more city environmental purchasing standards;

(2) a list of all solicitations that include any product that is subject to this chapter with an indication of the environmental purchasing specifications in each such solicitation and the city environmental purchasing standard that is applicable to any such product specified in such solicitation;

(3) a list and the aggregate dollar value of contracts exempted pursuant to subdivision a of section 6-303 of this chapter according to each type of exemption;

(4) a list and the aggregate dollar value of contracts for which a waiver has been issued pursuant to subdivision b of section 6-303 of this chapter according to each type of waiver with an explanation of the director's basis for granting each such waiver;

(5) any material changes to the city's environmental purchasing standards since the last publication of such report, including any new, updated or revised rules established or determinations made by the director;

(6) an identification of any product for which new or additional environmental purchasing standards are necessary;

(7) beginning January 1, 2008, an explanation of any determination pursuant to subdivision b of section 6-308 of this chapter not to require compliance with the CPG;

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(8) a list of products considered in implementing subdivision c of section 6-308 of this chapter, including an indication of whether any such products were determined to be of inadequate quality, unavailable within a reasonable period of time, at a price that does not exceed a cost premium of seven percent (7%) above the cost of a comparable product that is not a recycled product or at a price that does not exceed a cost premium of five percent (5%) above the cost that would apply pursuant to subdivision a of section 6-308;

(9) beginning January 1, 2008, an explanation of any determination pursuant to subdivision c or d of section 6-306 of this chapter not to require compliance with the federal energy management program;

(10) a description of the good faith efforts required pursuant to subdivision b of section 6-302 of this chapter;

(11) a description of the director's efforts pursuant to subdivision d of this section;

(12) until October 12, 2012, a report on the implementation of section 6-307, section 6-309 and subdivision b of section 6-310 of this chapter; and

(13) for the annual report required in 2008, and every fourth year thereafter, for each product subject to the provisions of this chapter, the total dollar value of such products purchased or leased by any agency and the portion of such purchases that comply with the city's environmental purchasing standards; and, to the extent practicable, the total value of such products purchased or leased by any contractor pursuant to any contract with any agency, including any such contract for construction work in any building, that is subject to this chapter and the portion of such purchases that comply with the city's environmental purchasing standards.

§6-305 **Agency implementation**. a. Each agency shall designate an environmental purchasing officer who shall:

(1) coordinate with the director to ensure agency compliance with the city's environmental purchasing standards; and

(2) submit an annual report as required by the director detailing such compliance.

b. The department of education shall submit an annual report to the speaker of the council and the

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mayor by October 1 of each year detailing the department's procurement activities that are consistent with the city's environmental purchasing standards.

§3. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§4. This local law shall take effect January 1, 2007, except the mayor shall appoint a director of citywide environmental purchasing within 60 days after January 1, 2006, and such director shall take any actions necessary, including the promulgation of rules, to implement this local law on or before the date upon which it shall take effect. Provided, however, that this local law shall take effect only in the event that: Int. No. 545-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of products with recycled content, and to repeal section 6-122 and subchapter 5 of chapter 3 of title 16 of such code, takes effect; Int. No. 536-A, a proposed local law to amend the administrative code of the city of New York, in relation to the purchase of energy efficient products, and to repeal subdivisions a, c, d, e and f of section 6-127 of such code, takes effect; and Int. No. 544-A, a proposed local law to amend the administrative code of the city of New York, in relation to the reduction of hazardous substances in products purchased by the city, takes effect.

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12/13/2005