



Legislation Text

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Int. No. 2

A Local Law to amend the administrative code of the city of New York, in relation to city contracts involving the purchase of wood products and materials.

By The Speaker (Council Member Miller) and Council Members Addabbo, Brewer, DeBlasio, Jackson, Koppell, Monserrate, Nelson, Perkins, Quinn, Reyna, Stewart, Avella, Seabrook, Gioia, Gentile, Weprin, Moskowitz, Liu, Gennaro, Recchia, Sanders, Vallone, Gerson, Yassky, Katz, McMahon, Fidler and Reed

Be it enacted by the Council as follows:

Section 1. Declaration of legislative findings and intent. The Council finds and declares that forests play a vital role in regulating the global climate, purifying the air and protecting watersheds. Forests contain at least half of the world's animal and plant species, many of which contribute to the production of medicines and food, and many more species that have not yet been discovered or evaluated for their beneficial uses. Throughout the world, communities depend on healthy forests for their economic value, including their role in sustaining fisheries and providing recreational opportunities. Regrettably, deforestation continues to displace indigenous people who live in forest areas, resulting in the destruction of their cultures. In addition, poorly managed logging operations degrade and destroy forests, increase the threat of forest fires and enable development to spread in forest lands, some of which are of such ecological significance that they should never be subject to commercial logging.

Recognizing the role that forests play in the global environment, the New York State Finance Law requires purchasing restrictions by both the state and local governments in relation to the procurement of tropical hardwoods and tropical hardwood products. The Council, however, finds that newly marketed building materials such as reclaimed wood, particle board from agricultural residue and recycled plastic lumber are environmentally preferable alternatives to the procurement of wood products. Pursuant to this legislation, the

City, abiding by standards dedicated to improving forest management and conservation, will use an independent, third-party forest certification procedure, with a separate chain-of-custody certification linking forest products to their forest of origin. This procedure will enable the City to know whether it is purchasing wood products that originate from responsibly managed forests. Accordingly, the City of New York, using its power as a market participant, shall engage in a policy of supporting ecologically sound forestry practices in its procurement of wood products.

§2. Title 6 of the administrative code of the city of New York is hereby amended by adding a new section 6-128, to read as follows:

§6-128. a. For purposes of this section only, the following terms shall have the following meanings:

(1) “Accreditation Body” means an authoritative body that verifies and gives formal recognition that a body or person is competent to carry out specific tasks.

(2) “Biobased Material” means material derived from agricultural residue, including, but not limited to, wheat straw, corn stover, rice straw and bagasse from fiber crops that are harvested at least annually.

(3) “Building Material” means supplies, fixtures and equipment that become part of or are annexed to any building or structure constructed, erected, altered, or repaired, including but not limited to, buildings, boardwalks, benches, bicycle paths, walkways, decking and piers.

(4) “Chain of custody certification” means a process that provides documentary evidence verifying that a given wood product is derived from a certified forest of origin.

(5) “Contract” means any written agreement, purchase order or instrument whereby the City is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing.

(6) “Contracting agency” means any office, department, administration, authority, division, bureau, board, commission, corporation, institution or agency of government, the expenses of which

are paid in whole or in part from the city treasury.

(7) “Environmentally preferable building material” means one or more of the following:

- (i) wood products for building materials or furniture articles originating in forests certified through a forest certification program pursuant to the requirements of this section;
- (ii) reclaimed wood products;
- (iii) biobased materials; or
- (iv) recycled plastic and other recycled materials.

(8) “Forest certification program” means an independent, third-party initiative that provides, through one or more organizations, formal affiliates or contracted agents, an integrated package of services including, but not limited to: development and application of standards to assess and certify forest management; accreditation of certifiers; and awarding of certification by the program’s accredited forest certifiers.

(9) “Forest Certifier” means an independent, third-party organization that conducts comprehensive assessments of environmentally and socially responsible forest management practices and that is accredited by an independent, third-party accreditation body.

(10) “Furniture article” means those movable articles: (i) used to support people or things; and, (ii) other functional or decorative products, including, but not limited to, beds, bookcases, chairs, chests, tables, dressers, desks and sofas. The term does not include lamps or lighting fixtures.

(11) “Reclaimed wood products” means wood legally salvaged from the following sources: buildings that are not historically significant; dead, fallen, diseased or nuisance trees from urban, private and government properties; usable wood safely reclaimed or diverted from landfills; wood by-products from secondary manufacturers; and discarded pallets.

(12) “Recycled material” means material that meets the minimum post-consumer material content requirements specified in title fifty-five, chapter eight, section three of the city of New York’s

rules and regulations.

(13) “Third-party” means not having an equity interest in the land or the management of the forests or chain of custody operation being evaluated, and independent from any forest trade association.

(14) “Wood product” means any wood products for a building material or furniture article, wholesale or retail, in any form, including but not limited to veneer, furniture, cabinets, paneling, moldings, doorskins, joinery or sawnwood.

b. Contracting agencies shall for the purposes of the procurement of wood products for a building material or furniture article seek to maximize the use of environmentally preferable building materials by whatever means practicable and authorized by law.

c. (1) No contracting agency shall purchase or enter into a contract that requires the use of a wood product for a building material or furniture article unless the contractor provides certificates, labels and/or other documents ensuring that such product’s chain-of-custody and/or its forest of origin have been certified through an eligible forest certification program pursuant to this section, and a statement that the information provided is true and accurate.

(2) The requirements of subdivision c, paragraph 1 shall not apply:(i) to reclaimed wood products; or

(ii) when the Landmarks Preservation Commission determines that the use of a particular species is necessary for historical restoration; or

(iii) where the inclusion or application of such provisions will violate or be inconsistent with the terms and conditions of a grant, subvention or contract of the United States government or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

(3) A contracting agency may waive the requirements of subdivision c, paragraph 1 of this section with regard to all or a portion of a contract under the following circumstances:

- (i) where the contracting agency finds that no person or entity that is qualified to do business with the city is capable of providing wood products sufficient to meet the particular contract requirements; or
- (ii) the contract is necessary in order to respond to an emergency that endangers the public health and safety and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available; or
- (iii) where the contracting agency determines that there is not a sufficient supply of certified wood products and completion of the contract will result in substantial delay; or
- (iv) where the inclusion or application of such requirements results in a substantial cost increase to the city.

All waivers pursuant to this subdivision shall be in writing, shall include the specific reason for the waiver and all information upon which the waiver is based, and shall become part of the contract file of the contracting agency. Notwithstanding any waiver, the contracting agency shall take every reasonable measure to contract with a contractor who best satisfies the requirements of this section.

d. (1) Within sixty days of the effective date of this section, the mayor shall direct the appropriate department or agency that he or she so designates to create a list of eligible forest certification programs.

(2) Within two hundred forty days of the effective date of this section, the designated department or agency shall promulgate rules and regulations in accordance with the administrative procedure act of the charter of the city of New York, specifying the information that forest certification programs must provide in order to be deemed eligible for the purposes of fulfilling the eligibility requirements of this subdivision. Such eligibility requirements shall include, but not be limited to:

- (i) an organizational structure consisting of a balanced membership of environmental, social and economic interests that democratically governs the operation of the program and that offers a

comprehensive and integrated package of services, including:

(a) the development and application of standards and procedures to assess and certify forest management and chain-of-custody certification operations;

(b) the formal accreditation of certifiers qualified to apply the standards;

(c) the awarding of certification, the approval of certification-related product claims (which may include labels), and the enforcement of rules governing their use;

(d) the monitoring of accredited certifiers and certified forest management and chain-of-custody operations, and the application of corrective actions to them as needed;

(e) procedures enabling interested parties to appeal accreditations and certifications; and

(f) the publication of clear information regarding (a)-(e), and

(ii) certification standards and procedures used by accredited certifiers, associated with the forest certification program, to assess forest management and chain-of-custody operations, which have been developed and approved through an open, democratic process involving an equitable representation of environmental, social and economic interests, and which ensure:

(a) that the forest manager/operator has legally established long-term use rights to the land and to harvest wood products;

(b) compliance by the forest manager/operator with all local and national laws and administrative requirements;

(c) that forest management areas are protected from illegal harvesting, settlement and other unauthorized activities;

(d) recognition of and respect for the traditional and customary rights of indigenous peoples to own, use and manage their territories and resources, and for any sites of special cultural significance to them;

(e) completion of environmental and social impact assessments of forest management operations and the incorporation of findings into management planning;

(f) formal consultation, during the certification assessment process, with people and groups affected by or interested in the particular forest management operation;

(g) protection of the health, welfare and right to organize of workers and local communities;

(h) that there are mechanisms in place for resolving grievances and disputes and for providing fair compensation in the case of impairment or loss of property rights or access to resources or livelihoods;

(i) conservation of the full range of forest values, resources and ecological functions, including soil, water, and forest regeneration and succession;

(j) that the rate of harvest of any forest product does not exceed a level that can be sustained in perpetuity;

(k) protection of: biological (i.e. genetic, species, ecosystem) diversity; rare, threatened and endangered species and their habitats; representative, unique and fragile ecosystems and landscapes, and; forests of particular high conservation value;

(l) avoidance of chemical use and promotion of non-chemical pest management;

(m) prohibition of chemical pesticides banned by international agreement: pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain; World Health Organizations Types 1A and B and chlorinated hydrocarbon pesticides; and genetically modified organisms;

(n) implementation of careful controls to avoid adverse ecological impacts where exotic species and biological control agents are used;

(o) prohibition of the conversion of forests to plantations or non-forest use except under extreme limited circumstances where the conservation benefits clearly outweigh the risks;

(p) that where management operations include plantations, in addition to meeting the other requirements of this subdivision, the plantations' design, layout and species composition shall promote and give preference to native species and structural and age-class diversity and shall maintain or restore a portion

of the site to native natural forest and vegetation cover;

(q) adherence to a written management plan, the primary elements of which are made public;

(r) regular monitoring of management operations by the forest manager, and publication of summary results;

(s) that annual on-the-ground audits are conducted by third-party certifiers, using an interdisciplinary team of experts to evaluate the ecological, social and economic impact of forest management practices;

(t) that the approved forest management certification standards are not modified or customized on a case-by-case basis from operation to operation by the forest management operations undergoing assessment;

(u) separate chain-of-custody certification, linking each certified forest product to its specific certified forest of origin; and

(3) (v) that detailed written audit summaries for every certified forest are produced and made publicly available in a timely manner. Once the designated department or agency has determined that a certification program has met the eligibility requirements specified in this subdivision, the certification program and the accredited certifiers associated with that program shall be deemed to be approved and eligible for the purposes of this section for as long as the certification program meets these eligibility requirements.

(4) The designated department or agency shall annually review and issue a report regarding the operation of approved and eligible forest certification programs to ensure that such programs are meeting the eligibility requirements of this subdivision. The department or agency shall annually submit a report to the mayor, the council and the comptroller on the information collected pursuant to this subdivision. If the designated department or agency determines that an approved and eligible certification program is not meeting the eligibility requirements of this subdivision, that certification program shall no longer be deemed an approved and eligible certification program for purposes of this section.

- e. In every bid proposal, solicitation, request for bid or proposal and contract for the procurement of wood products, the contracting agency shall: (1) state the policy created by this section; (2) provide a list of eligible certification programs and the accredited certifiers associated with those programs pursuant to subdivision (d) for the purposes of fulfilling the requirements of a contract; and (3) make it known that it will accept bids for both environmentally and non-environmentally preferable products simultaneously. This subdivision shall not apply to the procurement of wood products subject to subdivision (c), paragraph 2 of this section.
- f. Within two hundred forty days of the effective date of this section, the agency or department designated by the mayor shall promulgate rules specifying the documents and information that contractors must provide to the contracting agency for the purposes of satisfying subdivision (c), paragraph 1 of this section, including but not limited to certificates, labels and/or other documents ensuring that the chain-of-custody and/or forest of origin of forest products provided by the contractor have been certified through an eligible forest certification program pursuant to this section, and a statement that the information provided is true and accurate.
- g. A contractor shall be liable for a civil penalty of not less than \$5,000 upon a determination that a contractor has been found, through litigation or arbitration, to have made a false claim under the provisions of this section with the contracting agency.
- h. Upon a determination that a contractor is in violation of this section, the contracting agency shall review such information and offer the contractor an opportunity to respond. If the contracting agency finds that a violation has occurred, it shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the contractor in default and/or seeking debarment or suspension of the contractor.
- i. Each contracting agency shall report annually to the comptroller on its use of environmentally preferable building materials. This report shall include: (1) the total

number of contracts entered into by the contracting agency during the previous calendar year and the percentage of those contracts fulfilled with environmentally preferable building materials; (2) the total volume of building materials and furniture articles purchased by the contracting agency during the previous calendar year and the percentage of that total volume that consisted of environmentally preferable building materials; (3) the total dollar amount of all building materials and furniture articles purchased by the contracting agency during the previous calendar year and the total dollar amount of environmentally preferable building materials purchased during the previous calendar year; (4) a list of all contracts entered into by the contracting agency during the previous calendar year for which, pursuant to subdivision c, paragraph 2 of this section, the requirements of subdivision c, paragraph 1 did not apply, which shall include the reason for the inapplicability to each contract; (5) a list of all contracts entered into by the contracting agency during the previous calendar year for which the agency, pursuant to subdivision c, paragraph 3 of this section, waived the requirements of subdivision c, paragraph 1 of this section for all or a portion of a contract, which shall include the name of each contractor that was awarded a contract that resulted in the use of a waiver by the contracting agency and the specific reason for the waiver; and (6) a list of all contractors that provided environmentally preferable building materials to the contracting agency during the previous calendar year, which shall include the type(s) of environmentally preferable building materials with total volume and total dollar amount for each of the type(s) of environmentally preferable building materials provided by each contractor. Upon the comptroller's request, the contracting agency shall provide to the comptroller a copy of any waiver written pursuant to subdivision c, paragraph 3 of this section.

j. All waivers, reports, and materials generated and/or submitted in accordance with

subdivisions c(3), d(3), d(4), i and k of this section shall be maintained and made available for public inspection and copying. This provision is not intended to limit access to any information already available under the New York State freedom of information law.

k. Within eighteen months of the effective date of this section, the comptroller shall commence an annual audit to determine where wood used to fulfill city contracts originates. Interested third parties shall be permitted an opportunity to submit information relating to the city's procurement policies regarding wood products and such submissions shall be reviewed and considered as they become available. Such audit shall be submitted to the mayor and the council on the information collected pursuant to this subdivision, including, but not limited to, recommendations for how the city can strengthen its procurement policies pursuant to this section in order to reduce environmental damage on forest lands.

l. Nothing in this section shall be construed as limiting or increasing the prohibition on purchases of tropical hardwoods as articulated in section 165 of the New York State finance law.

m. This section shall apply to all applicable contracts in excess of the amounts established pursuant to section three hundred fourteen of the charter of the city of New York.

n. This section shall not apply to any contract with a contracting agency entered into prior to the effective date of this local law.

§ 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 90 days after its enactment.