

## CHAPTER 2: ENVIRONMENTALLY PREFERABLE PURCHASING ORDINANCE

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### SEC. 200. FINDINGS.

A. Under this Chapter, the City and County of San Francisco wishes to exercise its power to make economic decisions involving its own funds as a participant in the marketplace and to conduct its own business as a municipal corporation to ensure that purchases of commodities and expenditures of public money are made in a manner consistent with its human health and environmental policies.

B. The results of a three year pilot study implementing environmentally preferable purchasing for City departments demonstrated the feasibility of developing relevant human health and environmental selection criteria for products used to maintain City buildings and vehicle fleets. The pilot program further demonstrated that products meeting these criteria are available, competitive, and effective at meeting the City's performance standards. It is the City's intention that ultimately there will be environmentally preferable alternatives for each commodity required to be purchased by the City.

C. The Precautionary Principle calls for full disclosure by manufacturers and suppliers so the most protective standard can be applied in the comparison of potential alternatives. Only the full disclosure of ingredients and impacts of the products and services will allow the City to make informed and protective decisions. For example, suppliers of pesticides should disclose the "inert" ingredients in products used on City property instead of limiting disclosure to the legal requirement of "active" ingredients which may make up less than 1% of the product.

D. The Precautionary Principle calls for a participatory and transparent process in the evaluation and selection of potential alternatives. Participation in decision-making by impacted communities is a basic tenet of the Precautionary Principle.

Citizens of San Francisco enacted the Sunshine Ordinance to ensure transparency in City government; the Commission on the Environment operates under the mandates of the Sunshine Ordinance in addition to the requirements of the Brown Act and Public Records Act. Above and beyond that, deliberations and decisions under this ordinance made in accordance with the Public Participation Guidelines shall be made in concert with affected community members; community involvement is as central to the process as data gathering and expert advice.

E. Purchases of commodities made by the City and County of San Francisco that are consistent with the Precautionary Principle will encourage market development of new, healthy, environmentally preferable technologies and products and will demonstrate the efficacy of this approach to other government agencies, residents and businesses which will help generate regional demand for healthy products, a healthy way of doing business, product innovation, business development and competition.

F. Implementing the Precautionary Principle is both good science and good economic sense. Precautionary action benefits workers, stimulates innovation and supports timely action to avoid costs to public health and the environment. Precautionary business practice leads to expanded

local production, job creation and the development of technologies that support job creation in the area of environmentally preferable products. To this end, the Department of the Environment, the Small Business Commission, the Office of Contract Administration and the Human Rights Commission will work together to ensure that there is sufficient outreach, education and training provided to disadvantaged businesses in order to create equitable access and competition for city contracts affected by precautionary purchasing.

G. Many of the City's purchasing decisions have impacts across departmental boundaries. Therefore, interdepartmental cooperation is a key element to a successful precautionary purchasing program. City staff must work closely together to create opportunities for the exchange of ideas and the flow of information between departments and the larger community.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 200 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.1; added by Ord. 121-99, File No. 990405, App. 5/21/99)

## **SEC. 201. GOALS.**

The purpose of this Chapter is to reduce negative impacts to human health and the environment through the development of specifications for City purchases that:

1. Reduce occupational health hazards for City staff as well as reduce exposure of residents and visitors to potentially toxic chemicals by purchasing products for use in operations that do not harm human health or the environment;
2. Reduce San Francisco's contribution to global climate change by purchasing products that lead to a reduction in greenhouse gas emissions from Commodities;
3. Improve the air quality for San Francisco residents and visitors by purchasing vehicles and motorized equipment that minimize emissions of air pollutants;
4. Protect the quality of San Francisco's ground and surface waters by eliminating the use of chemicals known to contaminate local water resources through toxicity, bioaccumulation or persistence; and
5. Preserve resources locally and globally through purchasing practices that include:
  - (i) Maximizing water and energy efficiency and favoring renewable energy sources;
  - (ii) Maximizing post consumer recycled content and readily recyclable or compostable materials;
  - (iii) Favoring long-term use through product durability, repairability, and reuse; and
  - (iv) Considering life cycle economics of a product that includes manufacturing, transportation, use and disposal.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 201 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.2; added by Ord. 121-99, File No. 990405, App. 5/21/99)

## **SEC. 202. DEFINITIONS.**

Unless otherwise defined below, words in this Chapter shall have the same meanings as those words in Chapter 21 of the Administrative Code.

- (a) "Approved Alternatives List" shall mean the list of alternatives to a product in a Targeted Product Category identified, evaluated and approved by the Director. Products

on an Approved Alternatives List will have a lesser impact on human health and environment compared to other similar products, consistent with the Precautionary Principle as defined in Chapter 1 of the Environment Code.

- (b) "Commission" shall mean the Commission on the Environment established by Charter section 4.118.
- (c) "Contract" shall mean an agreement with a nongovernmental entity for the purchase of Commodities at the expense of or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County of San Francisco. The term "Contract" shall include a purchase order or other written instrument for the purchase of Commodities.
- (d) "Contractor or Contracting Party" shall mean a person that enters into a Contract with the City.
- (e) "Department" shall mean the Department of the Environment established by Charter section 4.118.
- (f) "Director" shall mean the Director of the Department of the Environment.
- (g) "Targeted Product Category" shall mean a broad category of products routinely purchased by the City which have been identified by the Commission as having undesirable environmental health impacts for which alternative products should be identified and substituted.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 202 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.3; added by Ord. 121-99, File No. 990405, App. 5/21/99)

## **SEC. 203. COMMISSION AND DEPARTMENT OF THE ENVIRONMENT DUTIES.**

- (a) **Public Participation Guidelines.** In order to promote meaningful public participation, consultation with technical experts, individuals with expertise in environmental protection or environmental health, community groups and the public, and not later than 90 days from the effective date of this Chapter, the Director shall, at a public meeting, adopt Public Participation Guidelines for use in making designated decisions under this Chapter. Amendments to the Public Participation Guidelines may be made by the Director in the same manner.
- (b) **Targeted Product Categories.**
  - (i) Not later than 210 days from the effective date of this Chapter and regularly thereafter, the Director, in accordance with the Public Participation Guidelines, will consult with the Director of the Department of Public Health, the City Purchaser, City department users, technical experts, individuals with expertise in environmental protection or environmental health, community groups, labor representatives and the public to develop and submit recommendations for Targeted Product Categories to the Commission on the Environment.
  - (ii) Not later than 270 days from the effective date of this Chapter and regularly thereafter, the Commission on the Environment will designate Targeted Product Categories at a public meeting.
- (c) **Approved Alternatives List for Targeted Product Categories.**
  - (i) **Criteria.** For each Targeted Product Category, the Director, in accordance with the Public Participation Guidelines, will consult with the Director of the Department of Public Health, the City Purchaser, City department users, technical experts, including individuals with expertise in environmental protection or environmental health, community groups, other governmental entities, and the public to develop a comprehensive set of substantive and qualitative human health and environmental criteria by which to evaluate products in a Targeted Product Category. Criteria will be designed to effectuate the goals stated in

Section 201 and will take into account non-local impacts for which information is available. The following factors may be considered in establishing the criteria: human health impacts and environmental impacts and threats of harm to human health or the environment. includes, but is not limited to: greenhouse gas and air pollution emissions; transport impacts; groundwater and surface water contamination; water and energy efficient renewable energy sources; recycled content; durability; and ability to recycle, refuse compost. The Director will adopt criteria for each Target Product Category. The Director will post the criteria for each Target Product Category on the Department's website.

The Director, in accordance with the Public Participation Guidelines, will regularly review and revise the criteria to reflect the current state of scientific knowledge regarding health and environmental effects.

(ii) Evaluation and Adoption. The Director shall create an Approved Alternatives List for each Targeted Product Category either by: objectively evaluating each potential alternative within a targeted product category based on the criteria or through a bid solicitation based on the criteria issued by the Office of Contract Administration or other relevant department. The Director will present the Approved Alternatives List and subsequent revisions to the Commission at a public meeting and shall notify all City departments of adoption or revision of an Approved Alternatives List.

(iii) The Director shall respond within 90 days to any written request to include a particular product on the Approved Alternatives List.

(iv) The Approved Alternatives List for each Targeted Product Category shall indicate where each included commodity is produced. In making a purchase decision, the City Purchaser and City department users, after considering other relevant factors such as cost, may at his or her discretion give priority to commodities produced within the geographic boundaries of the City.

(d) Rules and Regulations. After a public hearing, the Director, in consultation with the Purchaser, may promulgate rules, regulations or guidelines as required by this Chapter or necessary or appropriate to carry out the purposes and requirements of this Chapter and may adopt forms necessary to implement this Chapter.

(e) Training. The Director shall implement ongoing training for City employees and contractors for the purpose of compliance with this Chapter and provide ongoing training to industrial health and safety officers, environmental staff, contracting officers and others involved in purchasing decisions and product use.

(f) Presentation to Board of Supervisors. Not later than 15 months from the effective date of this Chapter, the Director will notify Clerk of the Board of Supervisors that the Department is prepared to deliver its presentation and ask the Clerk to work with the President of the Board of Supervisors to calendar the presentation for the appropriate Board committee.

(g) Annual Review and Report to Commission and Board of Supervisors. Not later than twenty-four months from the effective date of this Chapter, and annually thereafter in February, the Director shall submit a report to the Commission and the Board of Supervisors on the progress of City departments towards full compliance with this Chapter. The annual report shall include:

(i) an evaluation of the progress in meeting the goals in Section 201;

(ii) the status and effectiveness of current efforts by City departments to implement this Chapter and additional specific actions, including legislation, needed to effectively implement this Chapter;

(iii) a summary of the annual reports submitted by City departments pursuant to section 205(b) and a list of waivers granted by the Purchaser during the previous period organized by department.

(iv) an update on the extent and efficacy of training programs for users and purchasers of

**Targeted Products;**

- (v) a workplan for the next reporting period with specific goals, actions and timeline necessary to implement this Chapter; and
- (vi) The annual report required by this section shall include a recommendation by the Director, after consultation with City Departments and the public, on how to expand the Chapter to City contractors.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.4; added by Ord. 121-99, File No. 990405, App. 5/21/99)

**SEC. 204. APPLICABILITY.**

This Chapter applies only to Contracts for the procurement of Commodities as governed by Chapter 21 of the Administrative Code. Once the Director has adopted an Approved Alternatives List for a product within a Targeted Product Category, each City department entering into a new Contract extending the term of an existing Contract for the purchase of that product shall only purchase products from the Approved Alternatives List.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 204 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.5; added by Ord. 121-99, File No. 990405, App. 5/21/99)

**SEC. 205. DUTIES OF CITY DEPARTMENTS.**

- (a) Each City department, board and commission subject to this Chapter shall cooperate with and provide in writing to the Director all information necessary or the Director to carry out her or his duties under this Chapter. Appropriate City department personnel will attend training offered by the Director.
- (b) Not later than twenty months from the effective date of this Chapter, and annually thereafter in December, each City department that purchases Target Products shall provide a report to Director including the following information:
  - (i) A list of Contracts, including the amount spent and actual quantities purchased (to extent feasible), issued for products in each Targeted Product Category in the prior period.
  - (ii) A summary of any waivers from this Chapter in the prior period.
- (c) In addition to these obligations, each City department shall use its best efforts to incorporate Commodities from the Approved Alternatives List into existing Contracts. If the City department is unable to amend an existing Contract, the City department is authorized to enter into another Contract to procure such products, provided that the City department complies with all other applicable laws. Nothing in this Chapter is or shall be interpreted to require or authorize any department to breach the terms of a Contract. Each City department shall document its efforts pursuant to this Section in the annual report filed under Subsection (b), explaining the circumstances.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 205 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.6; added by Ord. 121-99, File No. 990405, App. 5/21/99)

**SEC. 206. WAIVERS.**

The application for a waiver shall be filed on a form specified by the Purchaser. The waiver

application will be sent electronically to any person who requests such notification. The Purchaser will consult with the Director on the waiver application and shall respond to the requesting department within 5 days of receipt of a waiver application. Waivers may be issued for up to the term of the Contract. Waivers from the requirements of this Chapter are available under the following circumstances:

- (a) **Emergency.** A City department may grant itself a waiver from this Chapter when purchase of a Commodity is necessary to respond to an emergency which meets the criteria set forth in section 21.15(a) of the Administrative Code. In such case, the Director of the City department shall within two business days notify the Purchaser in writing emergency that prevented compliance with this Chapter, disclose the use and intensity of use of the product, describe steps being taken to safeguard public and City employee health during the emergency use and explain how such an emergency will be avoided in the future.
- (b) **Performance Standards.** A City department may request a waiver from this Chapter from the Purchaser when no product on the Approved Alternatives List meets departmental performance standards. The Purchaser shall grant a waiver upon a showing that the requesting department has:
  - (i) thoroughly tested each product on the Approved Alternatives List and none meet the department's performance standards (including timely availability); and
  - (ii) disclosed the use and intensity of use for the product and developed a reasonable plan to minimize use of the selected product and/or protect employees and public from exposure; and
  - (iii) provide a written memorandum detailing all attempts to explore and utilize listed alternatives to the selected product within the waiver period.
- (c) **Cost Prohibitive.** A City department may request a waiver from this Chapter from the Purchaser when every product on the Approved Alternatives List is cost prohibitive. The Purchaser shall grant a waiver upon a showing that the requesting department has:
  - (i) demonstrated that each product on the Approved Alternatives List is cost prohibitive while taking into account the goals set forth in Section 201; and
  - (ii) disclosed the use and intensity of use for the product and developed a reasonable plan to minimize use of the selected product and/or protect employees and public from exposure; and
  - (iii) provide a written memorandum detailing all attempts to explore and utilize listed alternatives to the selected product within the waiver period.
- (d) **Other.** The Purchaser may determine that a waiver should be granted upon a showing that the requesting department has demonstrated a reasonable basis for a waiver and developed a reasonable plan to minimize use of the selected product and/or protect employees and public from exposure and to investigate alternatives to the selected product during the waiver period.
- (e) The Purchaser shall report on waivers granted to the Director and the Director shall report to the Commission at its next public meeting on:
  - (i) the product for which a City department obtained a waiver;
  - (ii) the proposed use and intensity of the product being used and the reason for the waiver;
  - (iii) steps being taken to safeguard public and City employee health during the waiver period; and
  - (iv) other waivers granted to that department.
- (f) The Purchaser and the Director shall maintain and post a list of all waivers on Departments' websites organized by department and shall mail the list to any person

requests such list.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 206 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.7; added by Ord. 121-99, File No. 990405, App. 5/21/99)

## **SEC. 207. TRADE SECRETS.**

(a) If a person believes that any information required to be reported or disclosed by this Chapter contains a trade secret, the person shall provide the information to the Director, the Purchaser (Office of Contract Administration) and other City departments requiring such information and shall notify the City in writing of that belief, detailing the basis of the belief as to each specific item of information the person claims is a trade secret and identifying the specific statute or judicial authority under which the claim is made. The person submitting the trade secret shall submit two forms of information: one with the trade secret information clearly marked and one prominently marked "public" with the trade secrets redacted. For purposes of this Chapter, "trade secret" shall have the same meaning as it has under state law. The person designating information as a trade secret shall specify a name and street address for notification purposes and shall be responsible for updating such information. The City shall not disclose any substantiated trade secret which is so designated by a person except as required by this Chapter or as otherwise required by law.

(b) Information designated as trade secret may be disclosed to an officer or employee of the City and County of San Francisco, the State of California, or the United States of America for a connection with the official duties of such officer or employee acting under authority of law for protection of health, without liability on the part of the City.

(c) When the Director or other City official or employee receives a request for information that has been designated as, or which the City determines may be, a trade secret, the City shall notify the person or business of the request. The City may request further evidence or explanation from the person as to why the information requested is a trade secret. If the City determines that the information does not constitute a trade secret, the City shall notify the person or business of that conclusion and that the information will be released by a specified date in order to provide the person or business the opportunity to obtain a court order prohibiting disclosure.

(d) In adopting this Chapter, the Board of Supervisors does not intend to authorize or require the disclosure to the public of any trade secrets protected under the laws of the State of California.

(e) This Section is not intended to empower a person or business to refuse to disclose any information, including but not limited to trade secrets, to the Director or other City Department required under this Chapter.

(f) Notwithstanding any other provision of this Chapter, any officer or employee of the City and County of San Francisco, or former officer or employee or contractor with the City or employee thereof, who by virtue of such employment or official position has obtained possession or has had access to information, the disclosure of which is prohibited by this Section, and who, knowing that disclosure of the information is prohibited, knowingly and willfully discloses the information in any manner to any person or business not entitled to receive it, shall be guilty of a misdemeanor.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 207 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.8; added by Ord. 121-99, File No. 990405, App. 5/21/99)

## **SEC. 208. ENFORCEMENT.**

Whenever any City department finds, after an investigation by the contracting officer and the Attorney, that a person or entity being considered for a Contract or under Contract with the City has

connection with the bidding, execution or performance of any Contract:

- (1) Falsely represented to the City the nature or character of the Commodities offered, used supplied under the Contract; or
- (2) Knowingly provided the City with Commodities in violation of this Chapter or the rules regulations adopted pursuant to this Chapter,

the contracting officer shall have the authority to impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this Chapter. For purposes of this subsection knowingly has the same meaning as in Chapter 6, Section 6.83 of the Administrative Code.

The City may take any enforcement action authorized by Chapters 21 or 28 of the Administrative Code, including, without limitation, department.

Nothing in this Chapter shall be construed to relieve a Contractor of responsibility for providing a satisfactory product.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 208 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.9; added by Ord. 121-99, File No. 990405, App. 5/21/99)

### **SEC. 209. PREEMPTION.**

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 209 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.10; added by Ord. 121-99, File No. 990405, App. 5/21/99)

### **SEC. 210. SEVERABILITY.**

In the event that a court or agency of competent jurisdiction holds that a federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this ordinance or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this ordinance shall remain in effect.

(Added by Ord. 115-05, File No. 050595, App. 6/17/2005) (Former Sec. 210 added by Ord. 171-03, File No. 030422, App. 7/3/2003; repealed by Ord. 115-05; Derivation Former Administrative Code Section 21F.11; added by Ord. 121-99, File No. 990405, App. 5/21/99)