

July 21, 2010

Detroit City Council
1340 Coleman A. Young
Municipal Center
Detroit, Michigan

RE: Proposed Ordinance to Amend Chapter 18, Article V, of the 1984 Detroit City Code, *Purchases and Supplies*, Division 1, *Generally*, By Renaming Division 1 from *Generally to Goods and Services*, By Creating Subdivision A, *In General*, and By Adding Subdivision B, *Environmentally-Preferable Procurement*

Honorable City Council:

The above-referenced proposed ordinance was requested by Your Honorable Body through Council Member Kenneth V. Cockrel, Jr. This proposed ordinance has been approved as to form.

Pursuant to the applicable provisions of the 1997 Detroit City Charter, the above-referenced proposed ordinance is being submitted to Your Honorable Body for consideration. The proposed ordinance amends Chapter 18, Article V, of the 1984 Detroit City Code, *Purchases and Supplies*, Division 1, *Generally*, by renaming Division 1 from *Generally to Goods and Services*, by creating Subdivision A, *In General*, which shall contain current Sections 18-5-1 through 18-5-22, and by adding Subdivision B, *Environmentally-Preferable Procurement*, which shall consist of Sections 18-5-23 through 18-5-29, to require that all purchases comply with Subdivision B, *Environmentally-Preferable Procurement*.


In addition, this proposed ordinance defines the terms 'alternative paper,' 'biodegradable,' 'energy star[®] compliant products,' 'environmentally preferable,' 'industrial oil,' 'life-cycle analysis,' 'lubricating oil,' 'post-consumer waste,' 'price-premium payback period,' 'readily biodegradable,' 'reblended latex paint,' 'recycled latex paint or reprocessed latex paint,' 'recycled material,' 'recycled oil,' 'recycled content paper,' 'retreaded tires,' 'secondary waste materials,' 'used oil,' 'virgin oil,' and 'volatile organic compounds.' Lastly, this proposed ordinance requires, in accordance with the criteria that is contained in Section 18-5-24 of this Code, that the City purchase environmentally-preferable products and services; that the City procure recycled content and alternative paper, and equipment for printing, copying and faxing; that the City procure oil products, which contain recycled oil; that City procure retreaded tires for use on the non-steering wheels on City vehicles; that the City procure of energy-efficient products; and that the City procure paint with low, or no, volatile organic compounds, recycled or reblended paint, and recycled surplus paint.



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We are available to answer any questions that you may have concerning this proposed ordinance. Thank you for your consideration.

Respectfully submitted,


Krystal A. Crittendon
Corporation Counsel

KAC: DAM
Attachment

S U M M A R Y

This proposed ordinance amends Chapter 18, Article V, of the 1984 Detroit City Code, *Purchases and Supplies*, Division 1, *Generally*, by renaming Division 1 from *Generally* to *Goods and Services*, by creating Subdivision A, *In General*, which shall contain current Sections 18-5-1 through 18-5-22, and by adding Subdivision B, *Environmentally-Preferable Procurement*, which shall consist of Sections 18-5-23, 18-5-24, 18-5-25, 18-5-26, 18-5-27, 18-5-28, and 18-5-29:

- 1) To require that all purchases comply with Subdivision B, *Environmentally-Preferable Procurement*;
- 2) To define the terms 'alternative paper,' 'biodegradable,' 'energy star[®] compliant products,' 'environmentally preferable,' 'industrial oil,' 'life-cycle analysis,' 'lubricating oil,' 'post-consumer waste,' 'price-premium payback period,' 'readily biodegradable,' 'reblended latex paint,' 'recycled latex paint or reprocessed latex paint,' 'recycled material,' 'recycled oil,' 'recycled content paper,' 'retreaded tires,' 'secondary waste materials,' 'used oil,' 'virgin oil,' and 'volatile organic compounds;'
- 3) To require, in accordance with the criteria that is contained in Section 18-5-24 of this Code, that the City purchase environmentally-preferable products and services;
- 4) To require, in accordance with the criteria that is contained in Section 18-5-24 of this Code, that the City procure recycled content and alternative paper, and equipment for printing, copying and faxing;
- 5) To require, in accordance with criteria that is contained in Section 18-5-24 of this Code, that the City procure oil products, which contain recycled oil;
- 6) To require, in accordance with criteria that is contained in Section 18-5-24 of this Code, that City procure retreaded tires for use on the non-steering wheels on City vehicles;
- 7) To require, in accordance with criteria that is contained in Section 18-5-24 of this Code, that the City procure of energy-efficient products; and
- 8) To require, in accordance with criteria that is contained in Section 18-5-24 of this Code, that the City procure paint with low, or no, volatile organic compounds, recycled or reblended paint, and recycled surplus paint.

1 **BY COUNCIL MEMBER _____:**

2 **AN ORDINANCE** to amend Chapter 18, Article V, of the 1984 Detroit City Code,
3 *Purchases and Supplies*, Division 1, *Generally*, by renaming Division 1 from *Generally* to *Goods*
4 *and Services*, by creating Subdivision A, *In General*, which shall contain current Sections 18-5-1
5 through 18-5-22, and by adding Subdivision B, *Environmentally-Preferable Procurement*, which
6 shall consist of Sections 18-5-23, 18- 5-24, 18-5-25, 18-5-26, 18-5-27, 18-5-28, and 18-5-29, to
7 require that all purchases comply with Subdivision B, *Environmentally-Preferable Procurement*;
8 to define the terms 'alternative paper,' 'biodegradable,' 'energy star® compliant products,'
9 'environmentally preferable,' 'industrial oil,' 'life-cycle analysis,' 'lubricating oil,' 'post-consumer
10 waste,' price-premium payback period,' 'readily biodegradable,' 'reblended latex paint,' 'recycled
11 latex paint or reprocessed latex paint,' 'recycled material', 'recycled oil,' 'recycled content paper,'
12 'retreaded tires,' 'secondary waste materials,' 'used oil,' 'virgin oil,' and 'volatile organic
13 compounds;' to require, in accordance with the criteria that is contained in Section 18-5-24 of this
14 Code, that the City purchase environmentally-preferable products and services; to required, in
15 accordance with the criteria that is contained in Section 18-5-24 of this Code, that the City procure
16 recycled content and alternative paper, and equipment for printing, copying and faxing; to require,
17 in accordance with criteria that is contained in Section 18-5-24 of this Code, that the City procure
18 oil products, which contain recycled oil; to require, in accordance with criteria that is contained in
19 Section 18-5-24 of this Code, that City procure retreaded tires for use on the non-steering wheels
20 on City vehicles; to require, in accordance with criteria that is contained in Section 18-5-24 of this
21 Code, that the City procure of energy-efficient products; and to require, in accordance with criteria
22 that is contained in Section 18-5-24 of this Code, that the City procure paint with low, or no, volatile
23 organic compounds, recycled or reblended paint, and recycled surplus paint.

1 therein. Such advertisement shall accurately and clearly describe or refer to
2 the subject matter of the proposed purchase and may also refer the bidder to
3 specifications on file in the Purchasing Director's office. Such advertisement
4 shall specify the time and place of submitting bids and such other
5 information from the specifications as the Purchasing Director shall deem
6 advisable in the interest of the City. After publication of one (1)
7 advertisement, specifications shall not be changed without the publication of
8 a new advertisement calling attention to such change. A reasonable time
9 shall be allowed to enable prospective bidders to prepare and submit bids
10 before the time set for public opening of bids.

11 c. Receive written bids submitted by prospective contractors.

12 d. 1. In comparing bids, the bid of any Detroit-based business or Detroit-
13 resident business shall be deemed a better bid than the bid of any
14 competing firm which is not a Detroit-based business or Detroit-
15 resident business whenever the bid of such competing firm shall be
16 equal to or higher than the bid of the Detroit-based business or
17 Detroit-resident business, after the appropriate equalization
18 percentage credit from the equalization allowance table has been
19 applied to the bid of the Detroit-based firm.

20 *Detroit-Based Business And Detroit-Resident Business Equalization Allowance Table*

<i>Contract Amount</i>	<i>Equalization Percentage</i>
Up to \$10,000.00	5%
\$10,000.01 to \$100,000.00	4%

1	\$100,000.01 to \$500,000.00	3%
2	\$500,000.01 and over	2%

3 If the bidder qualifies as both a Detroit-based business and a Detroit-resident
4 business, the equalization factor in the preceding table shall be doubled. If
5 the bidder has qualified as a Detroit-based business by virtue of being a
6 Detroit-headquartered business (D-HB), as defined in Section 18-5-1 of this
7 Code, it shall receive the equalization factor in the preceding table plus an
8 additional three percent (3%), provided that an affiliate, a subsidiary, a
9 limited-liability corporation, or other business structure shall not receive the
10 additional three percent (3%) where the Human Rights Department
11 determines that another related office outside the City of Detroit has a larger
12 presence than the Detroit office.

13 2. The following equalization percentage credits shall be applied to the
14 bids of the type of firms described in the equalization allowance table
15 below :

16 *Equalization Allowance Table For Joint Ventures Mentor Ventures,*
17 *and Detroit-Based Small and Micro Businesses*

18	Detroit-based small business	1%
19	Detroit-based micro business concern	2%
20	Joint venture	2%
21	Mentor venture	1%

22
23 (I) A bidder shall receive the equalization percentage credit for each
24 category for which it qualifies. The firm that makes the lowest bid,

1 as evaluated, shall be deemed the lowest bidder - .

2 (ii) In the application of these equalization percentage credits, a joint
3 venture shall not also be considered a mentor venture and a mentor
4 venture shall not also be considered a joint venture. Unless certified
5 before the deadline for submitting a bid, no bidder or firm shall
6 receive an equalization credit as a Detroit-based Business. Small
7 business or micro business concern. A joint venture or mentor
8 venture shall not receive an equalization credit unless the Detroit-
9 based Business in the venture has been certified as such before the
10 deadline for submitting a bid - .

11 (iii) If a bidder claims an equalization credit as a Detroit-resident
12 business, it shall submit documentation of its eligibility with its bid.
13 The Purchasing Division or the contracting department shall
14 determine whether the bidder qualifies as a Detroit-resident business
15 after the bid opening.

16 3. Any bidder who claims to be entitled to an equalization percentage credit
17 shall agree to make the records necessary to establish eligibility available to
18 the City.

19 4. After applying any equalization percentage credit as provided above, the
20 contract shall be awarded to the lowest responsible bidder thus evaluated.

21 5. The above requirements shall not be applicable if where any one of the
22 following conditions is found to exist.

1 (I) The expenditure involved is not "major" as defined in Section 18-5-1
2 of this Code or is.

3 (ii) Public exigencies require the immediate delivery of the articles or
4 performance of the service or is.

5 (iii) The Purchasing Director certifies that only one (1) source of supply is
6 available Code or is.

7 (iv) The services to be performed are professional in nature is or

8 (v) The item to be acquired is rare or unique.

9 (2) *Non-major purchases.* If the purchase entails an expenditure which is not major the
10 Purchasing Director is authorized to award the contract subject to the following
11 conditions:

12 a. The practice of competitive bidding is required but formal advertising is
13 required only for contracts over ten thousand dollars (\$10,000.00). An
14 equalization percentage credit shall be allowed as provided in Subsection
15 (1)d. of this section whenever there is full and free competitive bidding or
16 However, provided, that the Purchasing Director may limit bidding to
17 Detroit-based businesses and that no equalization percentage credit shall be
18 allowed for Detroit-based small business concerns or Detroit-based micro
19 business concerns ~~in which event no equalization percentage credit shall be~~
20 ~~allowed.~~

21 b. In soliciting bids or the Purchasing Director shall affirmatively seek out

1 Detroit-based business concerns.

2 c. The Purchasing Director must make a determination that the prospective
3 contractor is responsible. The Purchasing Director should utilize all
4 available information from within the division and other City departments
5 from the prospective contractor and from banks and other financial
6 companies in order to ascertain whether the prospective contractor is
7 responsible under the guidelines set forth under “lowest responsible bidder”
8 as defined in Section 18-5-1 of this Code.

9 (3) *Prohibition against unapproved assignments or subcontracts.* A Detroit-resident
10 business, a Detroit-based business, or a mentor venture or joint venture with a
11 Detroit-resident business or Detroit-based business may not assign or subcontract its
12 City contracts to a non-Detroit-based business or a non-Detroit-resident business
13 without the approval of such assignment or subcontract by the Purchasing Director.

14 (4) *Detroit-based business, Detroit-based small business or Detroit-based micro*
15 *business concern: Limited bidding.* On his or her own initiative or at the request of
16 the contracting department, the Purchasing Director may limit the bidding for a
17 contract to Detroit-Based Businesses, Detroit-based small businesses, or Detroit-
18 based micro businesses, provided, that there are at least three (3) firms certified or
19 registered by the Human Rights Department which would be eligible to bid for the
20 contract. The equalization factors in Section 18-5-2(1)d of this Code shall not apply
21 to contracts put out for bids under this subsection in determining whether to so limit
22 the bidding, the Purchasing Director should make commercially reasonable efforts

1 to maximize the utilization of Detroit-based businesses, Detroit-based small
2 businesses, or Detroit-based micro businesses. As used in this subsection (~~18-5-~~
3 ~~2(c)(4)~~) only, *should* means a strong recommendation, but does not mandate the
4 actions described.

5 (5) All purchases shall comply with Subdivision B of this article.

6 ~~Secs. 18-5-23 -- 18-5-30. Reserved. REPEALED.~~

7 *Subdivision B. Environmentally-Preferable Procurement*

8 Sec. 18-5-23. Definitions.

9 For purposes of this subdivision, the following words and phrases shall have the meanings
10 ascribed to them by this section:

11 *Alternative paper* means paper with environmental qualities that meet or exceed United
12 States Environmental Protection Agency standards.

13 *Biodegradable* means capable of being broken down, especially into innocuous products,
14 by the action of living things such as microorganisms.

15 *Energy Star[®] compliant products* mean products that meet or exceed the United States
16 Environmental Protection Agency's Energy Star[®] criteria for energy efficiency.

17 *Environmentally-preferable* means products or services that have a lesser or reduced effect
18 on human health and the environment when compared with competing products or services that
19 serve the same purpose and such comparison may consider raw materials acquisition, production,
20 manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product
21 or service.

1 Industrial oil means any compressor, turbine or bearing oil, hydraulic oil, metal- working
2 oil or refrigeration oil.

3 Life-cycle analysis means the comprehensive examination of a product's environmental and
4 economic aspects and potential impacts throughout its lifetime, including raw material extraction,
5 transportation, manufacturing, use, and disposal.

6 Lubricating oil means any oil intended for use in an internal combustion crankcase,
7 transmission, gearbox or differential, or an automobile, bus, truck, vessel, plane, train, heavy
8 equipment or machinery powered by an internal combustion engine.

9 Post-consumer waste means a finished material that would normally be disposed of as solid
10 waste, having completed its life cycle as a consumer item, but does not mean manufacturing waste.

11 Price-premium payback period means the number of years that it takes for the savings in
12 operating costs to offset any additional upfront price of the product versus a lower price, less-energy
13 efficient model, which is calculated by dividing the price premium by the annual savings in
14 operating costs.

15 Readily biodegradable means the measurement guidelines according to the Organization for
16 Economic Cooperation and Development.

17 Reblended latex paint means paint, which is also known as consolidated latex paint, that
18 contains one hundred percent (100%) post-consumer content from good-quality surplus with no
19 virgin materials such as resins and colorants added.

20 Recycled latex paint, or reprocessed latex paint, means latex paint with a post-consumer
21 recycled content level that at a minimum meets the requirements specified by the United States

1 Environmental Protection Agency's Recovered Materials Advisory Notice for reprocessed latex
2 paint.

3 Recycled materials means materials that would otherwise be a useless, unwanted, or
4 discarded material, except for the fact that the materials retain useful physical or chemical properties
5 after serving a specific purpose and, therefore, can be reused or recycled.

6 Recycled oil means used oil that has been prepared for reuse as a petroleum product by
7 refining, reclaiming, reprocessing or other means, provided, that the preparation or use is
8 operationally safe, environmentally sound, and complies with federal, state, and local laws and
9 regulations.

10 Recycled content paper means a paper product with not less than:

11 (1) Fifty percent (50%) of its fiber weight consisting of secondary waste materials; or

12 (2) Thirty percent (30%) of its fiber weight consisting of post-consumer waste.

13 Retreaded tires means tires that use an existing casing for the purpose of vulcanizing new
14 tread to such casing that meets all performance and quality standards in the Federal Motor Vehicle
15 Safety Standards determined by the United States Department of Transportation.

16 Secondary waste materials means fragments of products or finished products of a
17 manufacturing process that has converted a virgin resource into a commodity of real economic
18 value, including post-consumer waste, but does not mean excess virgin resources of the
19 manufacturing process, including fibrous waste generated during the manufacturing process such
20 as fibers recovered from waste water or trimmings of paper-machine rolls, mill broke, wood slabs,
21 chips, sawdust, or other wood residue from a manufacturing process.

1 Used oil means a petroleum-based or synthetic oil, which through use, storage or handling
2 has become unsuitable for its original purpose due to the presence of physical or chemical impurities
3 or loss of original properties.

4 Virgin oil means oil that has been refined and formulated from crude oil, synthetic oil, or any
5 blend of synthetic oil, and that has not been used or contaminated with physical or chemical
6 impurities.

7 Volatile organic compounds means organic compounds characterized by a tendency to
8 readily evaporate into the air, contributing to both indoor and outdoor air pollution and the creation
9 of photochemical smog.

10 **Sec. 18-5-24. General Policy.**

11 (a) In developing plans, drawings, work statements, specifications, or other product
12 descriptions, the City shall purchase, in accordance with this division, environmentally-preferable
13 products or services. This includes, but is not limited to, products that are durable, recyclable,
14 reusable, readily biodegradable, energy efficient, made from recycled materials, and nontoxic. In
15 addition, the City shall employ: 1) Environmental Protection Agency's Final Guidance on
16 Environmentally Preferable Purchasing; and 2) United States Federal Trade Commission's
17 Environmental Marketing Guidelines, as a means of articulating substantiation of "green standards"
18 to ensure that products and services are compatible with the intent of this division, and to encourage
19 purchasing behavior that minimizes negative impact upon the environment and the efficient use of
20 natural, scarce resources. In order to further this policy, the City shall purchase products and
21 services based on long-term environmental and operating costs, and find ways to include
22 environmental and social costs in short-term prices, as follows:

1 (1) Where the price of environmentally-preferable goods is lower than the price of goods
2 that are not environmentally-preferable, the environmentally-preferable goods shall
3 be given preference;

4 (2) Where the price of environmentally-preferable goods is equal to the price of goods
5 that are not environmentally-preferable, the environmentally-preferable goods shall
6 be given preference; and

7 (3) Where the price of environmentally-preferable goods is higher than the price of
8 goods that are not environmentally-preferable, the goods that are not
9 environmentally-preferable shall be given preference.

10 (b) In determining whether a bidder or proposer offers goods that are environmentally-
11 preferable, the City shall determine whether the bidder or proposer meets each of the following
12 criteria:

13 (1) The environmentally-preferable product is available;

14 (2) The environmentally-preferable product meets applicable standards;

15 (3) The environmentally-preferable product can be substituted for a comparable product
16 that is not environmentally-preferable;

17 (4) The product is clearly identified as “recycled” and not as “recyclable” or other such
18 derived but non-equivalent term; and

19 (5) Where required in the Solicitation Document, offerors certify in their submitted
20 offers the minimum, if not exact, percentage of post-consumer waste and total
21 recovered materials content in the products offered.

1 (c) In determining whether a bidder or proposer offers services that are environmentally-
2 preferable, the City shall determine whether the bidder or proposer utilizes environmentally-
3 preferable products.

4 **Sec. 18-5-25. Purchasing Paper and Related Equipment.**

5 In accordance with Section 18-5-24 of this Code, the City shall procure:

6 (1) Recycled content paper and other alternative paper; and

7 (2) Printers, copiers, and fax machines that, at a minimum, have duplex capability.

8 **Sec. 18-5-26. Purchasing Recycled Oil.**

9 (a) In accordance with Section 18-5-24 of this Code, the City shall procure lubricating
10 oil and industrial oil, which is obtained from a vendor whose oil product contains the greater
11 percentage of recycled oil, unless a specific oil product containing recycled oil:

12 (1) Is not available within a reasonable period of time or in quantities necessary to meet
13 the City's needs; or

14 (2) Is not able to meet the performance requirements or standard recommended by the
15 equipment or vehicle manufacturer, including any warranty requirements.

16 (b) The City shall ensure that its procedures and specifications for the procurement of
17 lubricating oil and industrial oil neither excludes recycled oil nor requires oil to be manufactured
18 from virgin oil.

19 **Sec. 18-5-27. Purchasing Retreaded Tires.**

20 In accordance with Section 18-5-24 of this Code, the City shall procure retreaded tires for
21 use on the non-steering wheels of City vehicles, unless one (1) of the following exceptions applies:

1 (1) The vehicles are fire, police, emergency assistance or public utility trucks or other
2 vehicles performing emergency services; or

3 (2) The vehicles are passenger-carrying vehicles with a gross weight rating of one (1)
4 ton or more.

5 **Sec. 18-5-28. Purchasing Energy Efficient Products.**

6 (a) In accordance with Section 18-5-24 of this Code, the City shall procure products that
7 meet or exceed Energy Star® criteria for energy efficiency. This applies to:

8 (1) Any equipment that uses electricity, natural gas, or fuel oil; and

9 (2) Products that indirectly impact energy use, such as, but not limited to, windows,
10 doors, and skylights.

11 (b) City procurement language for such products as delineated in Subsection (a) of this
12 section shall request that vendors provide:

13 (1) Evidence that the equipment meets or exceeds the Energy Star® criteria for energy
14 efficiency; and

15 (2) Savings analyses including: energy (kWh/yr, therms/yr, gallons of gasoline/yr, etc.),
16 operating costs (\$/yr), and the price-premium payback period.

17 (c) While many Energy Star® compliant products are currently available for no price
18 premium, should a price differential exist, the City shall apply a simple life-cycle analysis.
19 Purchases where the price-premium payback period is within five (5) years or less shall be
20 encouraged. Where the price-premium payback period is longer than five (5) years, Energy Star®
21 compliant products may still be used, provided, that the City shall not be obligated to purchase and

1 use Energy Star[®] compliant products in those circumstances.

2 **Sec. 18-5-29. Purchasing Interior / Exterior Architectural Paint Products.**

3 (a) In accordance with Section 18-5-24 of this Code, the City shall procure paint that
4 contains low, or no, volatile organic compounds, which complies with the current standards set forth
5 by the California South Coast Air Quality Management District Rule 1113 for Architectural
6 Coatings or volatile organic compounds and chemical component limits of Green Seal's Standard
7 GS-11, Section 4.1.

8 (b) Reblended latex paint, or recycled latex paint, with low, or no, volatile organic
9 compounds, as demonstrated by periodic tests conducted by the manufacturer, shall be given
10 preference and used whenever feasible.

11 (c) To reduce waste and support the recycled latex paint market, all surplus latex paint
12 shall be recycled using a local latex paint recycling program, where one is reasonably available.
13 Surplus paint includes all latex paint in excess of quantities stored for touch-up purposes. Latex
14 paint stored for touch-up purposes may not exceed five percent (5%) or five (5) gallons, whichever
15 is smaller, by volume, to the nearest gallon.

16 **Sec. 18-5-30. Reserved.**

17 **Section 2.** This ordinance is hereby declared necessary to preserve the public peace, health,
18 safety, and welfare of the People of the City of Detroit.

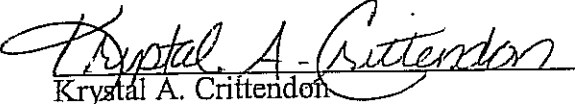
19 **Section 3.** All ordinances, or parts of ordinances, that conflict with this ordinance are
20 repealed.

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Section 4. This ordinance shall become effective sixty (60) days after the date of publication in accordance with Section 4-115 of the 1997 Detroit City Charter.

Approved as to form:


Krystal A. Crittendon
Corporation Counsel

DAM