

City Clerk File No. Ord. 09-003

Agenda No. 3.C 1st Reading

Agenda No. 4.C 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 09-003

TITLE: AN ORDINANCE AMENDING CHAPTER 3 (ADMINISTRATION OF GOVERNMENT), ARTICLE VI (DEPARTMENT OF ADMINISTRATION), OF THE CITY OF JERSEY CITY CODE TO INCLUDE A REQUIREMENT FOR THE PURCHASE OF GREEN PRODUCTS AND MATERIALS WHENEVER FEASIBLE

WHEREAS, the City of Jersey City Municipal Council [City] desires to protect the environment and the health and safety of its residents, work force and visitors; and

WHEREAS, the City, whenever possible, wishes to purchase Green Products, which do minimal or no damage to the environment, present the least potential threat to human health and to the City's natural systems and offset carbon emissions; and

WHEREAS, the City intends to meet the foregoing goal by purchasing goods and services that minimize the negative impact on the environment and protect the environment through the use of efficient, renewable energy, recycled, and low toxicity products, which, when compared with competing products of the same nature, have a lesser or reduced effect on human health and the environment [Green products]; and

WHEREAS, the City Code at Chapter 3, Article VI, Section 3-51 (F) (q) already provides for development of "a comprehensive, consistent and effective procurement effort intended to stimulate the market for recycled products, reusable products and products designed to be recycled," and

WHEREAS, the City Code at Chapter 3, Article VI, Section 3-51 (F) (t) states: "This section establishes a recycled product procurement policy required pursuant to federal law (42 U.S.C. Section 6962 of the Resource Conservation and Recovery Act)"; and

WHEREAS, the City wishes to expand upon Chapter 3, Article VI, Section 3-51 (F) by setting forth a policy that establishes a requirement for the City to purchase or lease Green products, unless there are demonstrable reasons not to do so, such as health, safety, performance prohibitions, and/or cost considerations.

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY HEREBY ORDAINS

1) That the City's Code at Chapter 3, Article VI, Section 3-51, subsection (F) (3) "Green Products Procurement Policy" be and hereby is amended to include be as follows:

A. The following amendments to Chapter 3 (Administration of Government) Article VI (Department of Administration) are hereby adopted:

ADMINISTRATION OF GOVERNMENT

ARTICLE VI

Department of Administration

§ 3-51. Purchasing; Division of Purchasing and Central Services.

A. Through E. No Change.

F. Division of Purchasing and Central Services; Purchasing Agent in charge; qualifications; functions.

(1) No Change.

(2) No Change.

(3) **Green Product Procurement Policy.** Under the direction of the Business Administrator, the Purchasing Agent shall purchase Green Products pursuant to the following policy:

(a) **Purpose.** This Subsection shall be known as the "Green Products Procurement Policy." Its purpose is to promote the purchase of products which minimize damage to human health and the City's natural environment, to reduce carbon emissions in the City and to stimulate the market for recycled, reused, and biodegradable products.

(b) **Definitions.** For the purposes of subsection F(3) the following definitions apply:

"Biodegradable" means the ability of a substance, material, or product ingredient to readily decompose by the action of microbes.

"Cleaning Product" means a dishwashing detergent or compound, household cleaner, commercial cleaner, industrial cleaner, metal cleaner, degreasing compound or other substance used or intended to be used for cleaning purposes.

"Conventional Products" are hereby defined as those products which the Purchasing Agent has evaluated for their effects on human health and the environment and has determined inappropriate for classification as Green Products, or those products that the Purchasing Agent has not yet so evaluated.

"Electronic Device" means:

[1] 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 or 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, or 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 not separate from, the larger piece of equipment, or any device used by emergency response personnel; or

[2] any other device powered by electricity designated by the Purchasing Agent.

“ENERGY STAR™ Products” are hereby defined as those products which meet the energy efficiency standards set forth by the United States Environmental Protection Agency (EPA) and the U.S. Department of Energy for compliance with its ENERGY STAR® program.

“ENERGY STAR™ Electronic Device” is hereby defined as any ENERGY STAR™ product that meets the definition of an Electronic Device.

“Excessive Costs” are hereby defined as costs of purchasing Green Products where either the immediate cost of purchasing the Green Product exceeds by 75% the immediate cost of the comparable Conventional Product in the current fiscal year, or where the average yearly cost of the Green Product exceeds by 75% the average yearly cost of comparable Conventional Product when amortized over the entire lifetime of both products. When evaluating the costs of Green Products and comparable Conventional Products, the Purchasing Agent shall compare total costs of each including, but not limited to: the costs of maintenance, insurance, disposal, replacement, safety and health, training, material management and potential liability costs.

“Green Products” are hereby defined as those products which the Purchasing Agent has determined would have a lesser or reduced negative effect on human health and the environment when compared with comparable Conventional Products and services, where such comparison includes consideration of all phases of the product’s life cycle, including raw materials acquisition, production, manufacturing, packaging, transportation, distribution, operation, maintenance, and disposal, including potential for reuse or ability to be recycled.

“Green Purchasing” is hereby defined as the practice of purchasing Green Products.

“Green Seal” is the non-profit organization, located at 1001 Connecticut Avenue, NW, Suite 827, Washington, DC 20036-5525 which evaluates and certifies products based on each product’s environmental impact throughout its life cycle.

“Green Seal™ Certified Products” are those products which Green Seal has evaluated and tested for environmental impact and has awarded the Green Seal™ certification, and which maintain such standards so as to allow such certification.

“Pre-Consumer Waste Material” means materials or by-products generated after manufacturing of a product is completed, but before the product reaches the end-use consumer. Pre-consumer waste material does not include home scrap, which is those scrap metals or by-products generated by a company that can be used by the generating company or parent company.

“Post-Consumer Waste Material” means only those materials generated by a consumer which have served their intended end use and which have been separated or diverted from solid waste. Wastes generated during production or an end product are excluded. All materials collected from residential sources in a municipal recycling program may be considered post-consumer.

“Recycled Content” means the total amount of Pre-Consumer Waste Material and Post-Consumer Recovered Material introduced as a feed

stock in a material production process, usually expressed as a percentage.

"Recyclable Product" means a product which, after its intended end use, twenty-five percent (25%) of the product has been diverted from the solid waste stream for use as a raw material in the manufacture of another consumer or procurable product. For the purposes of this definition, burning or composting of products may not be considered diversion.

"Recycled Material" means material and byproducts that have been recovered or diverted from solid waste and that can be utilized in place of raw or virgin material in manufacturing a product. It is derived from post-consumer recycled material, manufacturing waste, industrial scrap, agricultural waste, and other waste material, but does not include material or byproducts generated from, and commonly reused within, an original manufacturing process.

"Toxic or Hazardous Substance" means any substance that, because of its quantity or concentration, or physical or chemical characteristics, poses a significant present or potential harm to human health and safety or the environment if released into the workplace or environment."

"Purchasing Agent" is hereby defined as the Purchasing Agent for the City of Jersey City or his or her designees.

- (c) **Mandatory Product Evaluation.** The Purchasing Agent shall, in consultation with the City department(s) ordering or leasing the product(s), evaluate all products in the categories listed in subsections (l)-(n) below for their environmental impact. The Purchasing Agent shall then classify as Green Products those products which, considering the totality of their life cycle, have a reduced effect on human health and the environment, when compared with comparable products that serve a similar function.
- (d) **Permitted Product Evaluation.** The Purchasing Agent may, in consultation with the City department(s) ordering or leasing the product(s), evaluate for environmental impact such other products as he or she deems appropriate and may classify as Green Products those products which, considering the totality of their life cycle, have a reduced effect on human health and the environment when compared with comparable products that serve a similar function.
- (e) **Guidance for Green Product Classification.** The Purchasing Agent, when evaluating and classifying products as "Green products," shall consult:
- [1] 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;
 - [2] the EPA's Affirmative Procurement Plan entitled "EPA's Final Guidance on Environmentally Preferable Purchasing"; and
 - [3] the U.S. Department of Health and Human Service's booklet entitled "Purchasing Green products and Services at the U.S. Department of Health and Human Services" issued by the office of the Assistant Secretary for Administration and Management, Office of Acquisition Management and Policy in July, 2006 (and as amended and supplemented).

[4] Any similar instructional materials recently or later made available by the EPA, the U.S. Department of Health and Human Services, or the N.J. Department of Environmental Protection which may be reasonably instructive in determining whether a product should qualify as a Green Product.

- (f) **Classification of Third-Party Certified, Recycled, and Biodegradable Products.** When determining whether to classify a product as a Green Product, the Purchasing Agent shall give substantial consideration to whether products which have achieved GreenSeal™ certification or equivalent third-party certification, whether products are Biodegradable, whether products are Recyclable Products and whether products are composed of 10% or greater Recycled Content. GreenSeal™ Certified Products and products which have achieved equivalent third-party certification shall be classified as Green Products unless they contain dangerous levels of Toxic or Hazardous Substances, as defined in section (i), or unless there is a compelling reason not to so classify them. Compelling reasons against classification of such products as Green Products may include, but are not limited to:

- [1] excessive distance a product must be shipped throughout its life-cycle
- [2] environmentally harmful packaging
- [3] product's lack of fuel efficiency or energy efficiency
- [4] product's emission of chlorofluorocarbons (CFCs); and
- [5] product's significant lack of durability.

- (g) **Requirement for Purchasing Green Products.** Subject to paragraph (h) below, the Purchasing Agent shall purchase Green Products over comparable Conventional Products whenever the cost of the Green Product does not exceed by 25% the cost of Comparable Conventional Product, and may purchase Green Products over comparable Conventional Products when the cost of Green Product does not exceed by 75% the cost of the comparable Conventional Product. When evaluating the cost of a Green Product and a comparable product, the Purchasing Agent shall compare total costs over the life of the item, including, but not limited to: the costs of maintenance, insurance, disposal, replacement, safety and health, training, material management and potential liability costs.

- (h) **Waiver of Green Product Preference.** Wherever there exists one or more significant concerns regarding the purchase or lease of a Green Product, including Excessive Costs, health, safety, performance, compatibility, lack of availability within a reasonable period of time, or statutory prohibitions the Purchasing Agent may waive the preference for purchasing a Green Product and may purchase, lease, or allow the purchase or lease of comparable Conventional Products to the extent such concerns require, subject to section (i)[3]. Reasons for such a waiver shall be detailed in writing by the Purchasing Agent and maintained in the Office of the Purchasing Agent.

- (i) **Toxic or Hazardous Substances.** The presence of Toxic or Hazardous Substances is to be considered in product classification and purchasing as follows:

- [1] The Purchasing Agent shall not classify as Green Products any products which he or she determines contain dangerous levels of Toxic or Hazardous Substances, including, but not limited to lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers.

[2] The Purchasing Agent shall consider a product's achievement of Green Seal Certification or equivalent third-party certification as compelling evidence that the level of Toxic or Hazardous Substances in the product is not dangerous.

[3] The Purchasing Agent shall not select products with dangerous levels of Toxic or Hazardous Substances for purchase or lease except where:

[a] Purchasing Agent has waived the Green Product requirement pursuant to material concerns specified in subsection (h) above; and

[b] There is no comparable Conventional Product available that addresses the material concerns necessitating the waiver but does not contain dangerous levels of Toxic or Hazardous Substances.

- (j) **Maintenance of Information about Green Products.** The Purchasing Agent shall develop and maintain lists, descriptions and other relevant documentary information about Green Products and recycled products and make such information available to all City departments whenever possible.
- (k) **Purchasing or Lease Contract Specifications.** The Purchasing Agent shall review and modify current and future procurement requirements so that contract specifications, clauses and solicitation language address the standards of subsection F(3).
- (l) **Electronic Devices.** In accordance with subsections [1]-[5] below, the Purchasing Agent shall evaluate all Electronic Devices purchased or leased by the City for environmental impact, and determine whether all such electronic devices shall be to classified as Green Products.

[1] Except as indicated in paragraph (i) above, Electronic Devices issued the ENERGY STAR™ title shall be considered Green Products for the purposes of this Ordinance.

[2] The Purchasing Agent may also classify Electronic Devices which are not ENERGY STAR™ products as Green Products. In determining such classification, the Purchasing Agent shall consult those guidelines and standards issued, or to be issued, by the New Jersey State agency which is, or will be, charged with establishing energy-efficient guidelines, in addition to the guidelines denoted in paragraph (e) & (f) above.

[3] Subject to sections [4] & [5] below, when purchasing or leasing new Electronic Devices or replacing existing Electronic Devices the City shall select those which are both ENERGY STAR™ products and Green Products, where available, over those which are Green Products but not ENERGY STAR™ Products.

[4] In accordance with section (i) above, wherever an ENERGY STAR™ electronic device contains dangerous levels of Toxic or Hazardous Substances, it shall not be considered a Green Product and shall not be selected over other Electronic Devices which are Green Products.

[5] Whenever valid concerns regarding the purchase or lease of a ENERGY STAR™ Electronic Device exist, including health, safety, performance, availability, statutory prohibitions and/or excessive costs, the Purchasing Agent may waive the requirement for purchasing the ENERGY STAR™ Electronic Device, and may purchase, lease, or allow the purchase or lease of comparable non-ENERGY STAR™ products to the extent such concerns require. Reasons for such a waiver shall be

detailed in writing by the Purchasing Agent and maintained in the contract file.

- (m) **Carpets.** In accordance with [1] & [2] below, the Purchasing Agent or his or her designee shall evaluate all carpets, carpet cushions, and carpet adhesives purchased or leased by the City for environmental impact, and determine whether all such products shall be classified as Green Products:

[1] The Purchasing Agent may consider any widely accepted industry recommendations for reduced volatile organic compounds when classifying carpeting products in addition to the guidelines denoted in paragraphs (e) and (f) above.

[2] No carpet, carpet cushion, or carpet adhesive purchased by any City department shall contain the following volatile organic compounds in any significant concentration:

- [a] for carpet 4-phenylcyclohexene, formaldehyde or styrene;
- [b] for carpet cushions, butylated hydroxytoluene, formaldehyde or 4 phenylcyclohexen e; and
- [c] for carpet adhesives, folmaldehyde or 2-ethyl-hex anol.

- (n) **Miscellaneous Products.** The following are hereby designated for Green Product Evaluation. The Purchasing Agent, in consultation with the City department ordering the product, shall evaluate all products within each category as to each product's environmental impact to determine if each product shall be classified as a Green Product:

- [1] Cleaning Products
- [2] antifreeze
- [3] insulation products
- [4] recycled plastic products
- [5] re-manufactured laser printer toner cartridges
- [6] paint
- [7] re-manufactured tires and products made from recycled tire rubber, including rubber mats and play field surfaces
- [8] lights and light bulbs.

- (o) **Reclassification.** The Purchasing Agent shall have the authority to change classification status of any product by either adding or removing such product from the list of Green Products provided he or she has good cause to reclassify and does so according to the principles set forth in subsections (e)(f) & (i). Good cause to reclassify shall include but not be limited to:

- [1] Changes in the physical makeup or manufacture of the product or packaging which result in a material change in the product's net impact on human health, safety, or the environment.
- [2] Changes in the distribution or transportation of the product which result in a material change in the product's net impact on human health, safety, or the environment.
- [3] Purchasing Agent's discovery of information previously unknown to him or her regarding the presence or absence of dangerous levels of Toxic or Hazardous Substances in the product, the threat any such substances impose, or newly discovered hazards of substances previously not considered hazardous.
- [4] Purchasing Agent's discovery of information previously unknown to him or her regarding product's net impact on human health, safety, or the environment.
- [5] Changes in the product's status as a Green Seal™ product, an ENERGY STAR™ product or other comparable changes in third-party certification status.

- B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- C. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- D. This ordinance shall take effect at the time and in the manner as provided by law.
- E. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

Note: All new material is underlined; words in [brackets] are omitted. For purposes of advertising only, new matter is **boldface** and repealed matter by *italics*.

WM/igp
1/7/09

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED: _____

APPROVED: BO Kelly
Business Administrator

Certification Required

Not Required

Ordinance of the City of Jersey City, N.J.

Ord. 09-003

ORDINANCE NO. _____
 TITLE: 3.C. JAN 14 2009 4.C.



An ordinance amending Chapter 3 (Administration of Government), Article VI (Department of Administration), of the City of Jersey City Code to include a requirement for the purchase of Green Products and Materials whenever feasible.

RECORD OF COUNCIL VOTE ON INTRODUCTION											
JAN 14 2009 8-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
SPINELLO	✓			FULOP	✓			FLOOD	✓		
LIPSKI		ABSENT		RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
SPINELLO				FULOP				FLOOD			
LIPSKI				RICHARDSON				VEGA, PRES.			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
SPINELLO				FULOP				FLOOD			
LIPSKI				RICHARDSON				VEGA, PRES.			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
SPINELLO				FULOP				FLOOD			
LIPSKI				RICHARDSON				VEGA, PRES.			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on JAN 14 2009

Adopted on second and final reading after hearing on _____

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on _____

APPROVED:

 Robert Byrne, City Clerk

 Mariano Vega, Jr., Council President

Date: _____

APPROVED:

*Amendment(s):

 Jerramiah T. Healy, Mayor

Date _____

Date to Mayor _____