

Ordinance No. 121720

Council Bill No. 115123

AN ORDINANCE related to the City's purchasing programs and procurement of reusable products, recycled content products and recyclable products; amending definitions; clarifying that the City may adopt standards promulgated by Federal and State Agencies; clarifying roles and responsibilities; amending reporting requirements; amending Seattle Municipal Code Chapter 3.04 in connection therewith; and recodifying SMC Ch. 3.04 Subchapter II Purchases and Subchapter III Recycled Content Product Procurement Program as SMC Ch. 20.60.

CF No. \_\_\_\_\_

Date Introduced:	NOV 22 2004		
Date 1st Referred:	To: (committee)		
	NOV 22 2004	Finance & Budget	
Date Re - Referred:	To: (committee)		
Date Re - Referred:	To: (committee)		
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1-24-05	2-2-05		
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2-2-05	18		
Date Vetoed by Mayor:	Date Veto Published:		
Date Passed Over Veto:	Veto Sustained:		

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_

*Richard J. McIver*  
Councilmember

## Committee Action:

1/19/05 Pass RM, ~~RC~~ RC

1-24-05 Passed 7-0 (Absent: Steinhilber; Excused: (contin))

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_

*Law Department*

Law Dept. Review

OMP  
Review

*(Signature)*  
City Clerk  
Review

Electronic  
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Indexed

*Fiscal note cleared Dept  
Attachment to fiscal note  
Hearings  
Formalities  
Full Testimony  
No attachments to bill  
Check new bill  
Review comments*



ORDINANCE 121720

AN ORDINANCE related to the City's purchasing programs and procurement of reusable products, recycled content products and recyclable products; amending definitions; clarifying that the City may adopt standards promulgated by Federal and State Agencies; clarifying roles and responsibilities; amending reporting requirements; amending Seattle Municipal Code Chapter 3.04 in connection therewith; and recodifying SMC Ch. 3.04 Subchapter II Purchases and Subchapter III Recycled Content Product Procurement Program as SMC Ch. 20.60.

WHEREAS, in 1992 Resolution 28556 and Ordinance 116270 established policies, procedures and programs to encourage and increase the procurement of recycled content products and recyclable products; adding new sections to SMC Chapter 3.18 and amending SMC Sections 3.18.806 A, 3.18.810 and 3.18.826; and

WHEREAS, unless there is sufficient market demand for recycled content products, recycling collection programs will ultimately fail to achieve the objective of diverting large portions of the waste stream from disposal; and

WHEREAS, the City finds it desirable to continue to implement a procurement policy promoting the purchase and use of reusable products, recycled content products, and recyclable products, thereby helping to develop markets for materials that have been diverted from the solid waste stream; and

WHEREAS, SMC Chapter 3.04 has not been substantially reviewed and updated since 1992; and

WHEREAS, amendments to this ordinance are necessary to clarify the role of the administering Director, update mechanisms to adopt content standards, and clarify reporting requirements; and

WHEREAS, this ordinance articulates policy linkages to the City's Environmental Management Program and Sustainable Purchase Policy; and

WHEREAS, the City's purchasing legislation is currently located in SMC Ch. 3.04 and within the powers and duties of the Department of Executive Administration; and

WHEREAS, Title 20 of the Seattle Municipal Code was set-aside for "Public Works, Improvements and Purchasing" and the purpose of publishing the Code is to allow citizens access to important laws; and



WHEREAS, citizen access to information about the City's purchasing authority would be improved by relocating the Code to Title 20; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. Chapter 3.04 Subchapters II & III (SMC 3.04.100 through SMC 3.04.226) of the Seattle Municipal Code is re-designated Chapter 20.60 of the Seattle Municipal Code. The Code Reviser is authorized and directed to make ministerial changes to the Municipal Code, consistent with direction from the Department of Executive Administration, to implement the recodification of this ordinance and to make reference changes throughout the Municipal Code following and in accordance with the amendments herein.

Section 2. Subsection 3.04.200 C of the Seattle Municipal Code is amended as follows:

**3.04.200 Purpose.**

The purpose of this program is to:

\* \* \*

C. ((Provide)) Adopt content standards for recycled content and recyclable products for use in procurement programs by all departments;

Section 3. Section 3.04.202 of the Seattle Municipal Code is amended as follows:

**3.04.202 Definitions.**

~~((1. "Building insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned volume of a building and adjacent unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray in place, and loose fill insulation that are used as ceiling, floor, foundation, and wall insulation. This term also includes insulation products used to improve the thermal effectiveness~~

of building envelopes, but does not apply to insulation for air handling units, insulation for acoustic purposes, or cold storage insulation unless otherwise designated by the Director or his or her predecessor.

2. "Cement" means a powder like manufactured mineral product, often referred to as "Portland cement," used in the manufacture of cement concrete.

3. "Cement concrete" means concrete which contains cement.

4. "Cement with fly ash" means cement or cement concrete containing amounts of fly ash as determined by USEPA product standards.))

((5))1. "City solid waste stream" means any solid waste created or generated within City limits whether residential or nonresidential.

((6. "Compost" means the biological and manual conversion of yard wastes, food wastes, cleanwood wastes, woody land clearing debris and manure, whether source separated or mixed, into a humus like material.))

((7))2. "Content standards" means standards ((set or)) adopted by the Director ((or his or her predecessor)) pursuant to SMC 3.04.208 for the purpose of specifying ((the minimum)) content ((of recycled materials, whether post consumer waste or secondary waste, in a product necessary for the)) requirements that must be satisfied before a product ((to qualify as)) may be deemed a recycled content product or a recyclable product. The ((C))content standards may address categories of products or particular products ((also specify that a product be made in whole or in part from recyclable materials, and the maximum level of hazardous substances allowable in a product)).

1           ((8))3. "Contractor" means persons or companies contracting with the City for the  
2 purchase of any supplies, materials, equipment or service. This definition does not include  
3 contracts for services in connection with:

- 4                   a. The acquisition of real property and property rights;  
5                   b. Processing of claims; and  
6                   c. All litigation of the City or in which the City or any of its departments may be  
7 interested.  
8

9           ~~((9. "End use" means an intended final use of a product by a consumer which will not~~  
10 ~~result in additional value being added to the product.~~

11           ~~10. "Fly ash" means the finely divided mineral residue which results from the~~  
12 ~~combustion of coal, and which is typically collected from boiler stack gases by electrostatic~~  
13 ~~precipitation or mechanical collection devices.~~

14           ~~11. "Food waste" means the organic residues generated by the handling, storage, sale,~~  
15 ~~preparation, cooking and serving of foods.~~

16           ~~12. "Hazardous substance" means any hazardous substance listed as a hazardous~~  
17 ~~substance pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization~~  
18 ~~Act, all ozone depleting compounds as defined by the Montreal Protocol of October 1987, and~~  
19 ~~such other substances adopted by rule by the Director or his or her predecessor as presenting a~~  
20 ~~threat to human health or the environment.))~~

21           ((13)) 4. "Local recycled content product" means such product or products that are  
22 derived from recycled materials recovered from City solid waste, provided the material used in  
23 the manufacture of such products can be reasonably traced back to its generation within City  
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limits. Such products must contain a minimum of twenty-five percent (25%) recycled materials except in those cases where the U.S. Environmental Protection Agency has adopted procurement guidelines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901 et seq.) ("RCRA"). In those cases, the minimum content of recycled material shall not be less than specified in the most current adopted issue of those guidelines.

~~((14. "Lubricating oils" means petroleum based oils for reducing friction in engine parts and other mechanical parts.~~

~~15. "Mixed waste paper" means assorted grades of paper that have not been separated into individual grades of paper before being processed for use in the manufacture of new products.))~~

~~((16))~~ 5. "Paper and paper products" means all items manufactured from paper or paperboard.

~~((17. "Post consumer paper" means:~~

~~a. Paper, paperboard and fibrous wastes which have passed through their end use as consumer items; including corrugated boxes, newspapers, magazines, mixed waste paper, tabulating cards, and used cordage from places like retail stores, offices buildings and homes; and~~

~~b. All paper, paperboard and fibrous wastes that are collected as mixed municipal solid waste and later separated at a processing facility.~~

~~c. This definition does not include those paper materials generated from, and commonly reused within, an original manufacturing process such as mill broke or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residue such as bark.))~~

1           ((18)) 6. "Post-consumer waste" means solid waste, including yard waste, ~~((which))~~ that  
2 has passed through its end use as a consumer item and is suitable as feedstock in product  
3 manufacture.

4           ((19)) 7. "Purchase ~~((order))~~ contract" means any contract or order which is duly  
5 authorized and awarded or entered into by the Director or a department for the purchase of  
6 tangible goods.  
7

8           ((20)) 8. "Recyclable product" means a product or package made from a material for  
9 which curbside or drop-off collection systems are in place for a majority of City residents ~~((and/))~~  
10 or businesses, to divert from City solid waste for use as a raw material in the manufacture of  
11 another product or the reuse of the same product.  
12

13           ((21)) 9. "Recycled content product" means a product containing a minimum of twenty-  
14 five percent (25%) recycled materials except in those cases where the U.S. Environmental  
15 Protection Agency has adopted procurement guidelines under the Resource Conservation and  
16 Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901 et seq.). In those cases, the  
17 minimum content of recycled material shall not be less than specified in the most current adopted  
18 issue of those guidelines.  
19

20           ((22)) 10. "Recycled materials" means post-consumer waste ~~((and/))~~ or secondary waste  
21 that has been recovered or diverted from solid waste and that can be utilized in place of a raw or  
22 virgin material in manufacturing a product.  
23

24           ~~((23)) "Rerefined oils" means used lubricating oils from which the physical and chemical~~  
25 ~~contaminants acquired through previous use have been removed through a refining process. Re-~~  
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1 ~~refining may include distillation, hydrotreating or treatment employing acid, caustic, solvent, clay~~  
2 ~~or other chemicals, or other physical treatments than those used in reclaiming.~~

3 ~~24. "Retread tire" means a worn automobile, truck, or other motor vehicle tire, excluding~~  
4 ~~airplane tires, whose tread has been replaced.))~~

5 ((25)) 11. "Reusable product" means a product that can be used several times for an  
6 intended end use before being discarded, such as a washable food or beverage container or a  
7 refillable ballpoint pen.

8 ((26)) 12. "Secondary paper waste" means paper waste generated after the completion of  
9 a paper or paper product making process, such as envelope cuttings, bindery trimmings, printing  
10 waste, cutting and other converting waste, bud rolls, mill wrappers, and obsolete inventories,  
11 rejected unused fibrous waste generated during the manufacturing process such as fibers  
12 recovered from waste or trimmings of paper machine rolls (mill broke), or fibrous byproducts of  
13 harvesting, extractive or woodcutting processes, or forest residue such as bark.

14 ((27)) 13. "Secondary waste" means waste resulting from a part of a manufacturing  
15 process that, unless incorporated as a feedstock in product manufacture, must be disposed of as  
16 solid or hazardous waste.

17 ((28)) 14. "Solid waste" means all putrescible and nonputrescible solid and semisolid  
18 wastes, except wastes identified in WAC 173-304-015, including but not limited to garbage,  
19 rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles  
20 or parts thereof, discarded commodities, sludge from wastewater treatment plants and septage  
21 from septic tanks, wood waste, dangerous waste, and problem wastes. This includes all public,  
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private, industrial, commercial, mining and agricultural operations. Unrecovered residue from recycling operations shall be considered solid waste.

((29)) 15. "USEPA product standards" means the product standards of the United States Environmental Protection Agency published in the Code of Federal Regulations, Title 40, Chapters 248 through 253.

~~((30. "Woody land clearing debris" means tree stumps, trunks, brush, or other vegetation or plant waste generated from the process of clearing land for development.~~

~~31. "Yard waste" means vegetative prunings, leaves, grass or branches less than four inches in diameter generated from yards or other landscaped areas.))~~

Section 4. Section 3.04.204 of the Seattle Municipal Code is amended as follows:

**3.04.204 Policies.**

A. All departments shall use, where practicable, reusable products, recycled content products and recyclable products. The term "practicable" shall mean that the product performs adequately for its intended use and is available at a fair and reasonable price. ((÷

~~1. The recycled content product meets product specifications established by the Director;~~

~~2. The recycled content product is available from at least one vendor in sufficient quantity to meet City needs.))~~

B. The City shall require, whenever practicable, its vendors, contractors and consultants to use recycled content paper on all documents submitted to the City. In addition, the City shall require, whenever practicable, its vendors, contractors, and consultants to use reusable products, recycled-content products and recyclable products. Failure of a vendor, contractor, or consultant

1 to specify how it will comply this requirement may cause the City to determine that a bid is non-  
2 responsive.

3 C. The City shall maintain minimum content standards for the purchase of designated  
4 products, as consistent with USEPA and Washington State products and standards. ((establish  
5 the following goals, at a minimum, for the purchase of recycled content paper products, compost  
6 products, and rerefined lubricating oil products:

7  
8 1. ~~Recycled content paper products as a percentage of the total dollar amount of paper~~  
9 ~~products purchased on an annual basis~~

10 ~~÷ a. At least forty (40) percent by 1993,~~

11 ~~b. At least fifty (50) percent by 1994,~~

12 ~~c. At least sixty (60) percent by 1995;~~

13  
14 2. ~~Compost products as a percentage of the total dollar amount of soils purchased on an~~  
15 ~~annual basis:~~

16 ~~a. At least twenty five (25) percent by 1993,~~

17 ~~b. At least fifty (50) percent by 1995,~~

18 ~~c. At least sixty (60) percent by 1997;~~

19  
20 3. ~~Rerefined lubricating oil for use in all City vehicles, including trucks and heavy~~  
21 ~~equipment, and all hydraulic lifts, as a percentage of the total dollar amount of lubricating oils~~  
22 ~~purchased on an annual basis:~~

23  
24 ~~a. At least fifty (50) percent by 1994,~~

25 ~~b. At least eighty (80) percent by 1995.))~~  
26  
27  
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1 D. The Director (~~((shall))~~) may use recycled material content as a factor in determining the  
2 lowest and best bid in its procurement of goods and materials.

3 E. The Director shall promote the use of recycled content products and recyclable  
4 products to potential vendors to the City by publicizing (~~((their availability))~~) that the City  
5 emphasizes the use of environmentally preferable products by its contractors.

6 F. The Director, through the procedures set forth in SMC Chapter 3.02, is authorized to  
7 establish guidelines (~~((and/))~~) or rules to further the intent of this section and ordinance.

8 G. (~~((All terms, conditions and requirements of t))~~) This section shall apply equally to the  
9 Director and any department when it acts to acquire any aspects of public works for the City.

10 H. These policies are intended to (~~((follow guidelines established by the United States~~  
11 ~~Environmental Protection Agency for preferential procurement of recycled content products))~~) be  
12 compatible with the strategies and standards of the City's environmental management and  
13 sustainable purchasing programs.

14 I. Existing procurement policies and specifications shall be revised to include recycled  
15 content products or recyclable products unless the products do not meet an established  
16 performance standard of a department. In such situations, a department must provide the  
17 Director with satisfactory evidence that, for technical reasons, and for a particular end use, a  
18 product containing such materials will not meet reasonable performance standards.

19 Section 5. Section 3.04.206 of the Seattle Municipal Code is amended as follows:

20 **3.04.206 Annual report.**

21 (~~((A. Beginning March 15, 1994, t))~~) The Director shall provide an annual report to the  
22 City Council (~~((on or before March 15<sup>th</sup> of))~~) each year on the (~~((progress of implementation of the~~  
23

1 ~~Recycled Content Product Program required in Resolution 28556))~~ status of buy recycled  
2 activities. This report shall include data on the City's purchases of recycled content products,  
3 recyclable products, and reusable products. The Director may require periodic reporting by other  
4 departments to the Department of Executive Administration for the purpose of developing this  
5 report.  
6

7 ~~((B. The Director shall compile records of purchases by departments for inclusion in the~~  
8 ~~annual report. The report shall include all purchases in excess of One Thousand Dollars (\$1,000).~~

9 At a minimum, the report will include the following components:

10 1. ~~The percentage of post-consumer and/or secondary waste in any recycled content~~  
11 ~~products actually purchased;~~

12 2. ~~Price information comparing the cost of recycled content products to similar virgin~~  
13 ~~products where applicable;~~

14 3. ~~Information identifying the quantity of recycled content products procured over a~~  
15 ~~fiscal year as well as the percentage of total purchase dollars spent on recycled content products~~  
16 ~~within a given product category;~~

17 4. ~~The availability of recycled content products;~~

18 5. ~~The type of performance tests conducted on recycled content products and the nature~~  
19 ~~of test failures, if any;~~

20 6. ~~Department experience with the performance of recycled content products;~~

21 7. ~~Recommendations for changes in the Recycled Content Product Procurement~~  
22 ~~Program, including recycled content standards for additional products;~~

1       ~~8. A discussion of potential products or product categories for which recycled content~~  
2 standards might be developed in the future;

3       ~~9. A comparison of the performance of The City of Seattle's Recycled Content Product~~  
4 ~~Procurement Program with other relevant jurisdictions.~~

5       ~~C. Beginning February 1, 1994, each department shall report its actions to comply with~~  
6 ~~the Recycled Content Procurement Program to the Director by February 1st of each year.))~~

7       Section 6. Section 3.04.208 of the Seattle Municipal Code is amended as follows:

8       **3.04.208 Standards for recycled content.**

9       A. The Director ~~((or his predecessor))~~ shall ~~((set or))~~ adopt standards that specify ~~((the))~~  
10 minimum ~~((level of))~~ recycled content, recyclability, reusability, or other aspects of  
11 environmental preferability, consistent with the U.S. Environmental Protection Agency  
12 ("USEPA"), Washington State standard, and any City environmental management plan. In no  
13 case shall these standards be less stringent than USEPA standards. In addition, the Department  
14 may adopt standards for products that have not been addressed by USEPA or Washington State.  
15 The standards shall place primary emphasis upon the percentage of post-consumer waste content  
16 and the recyclability of the product. ((materials, whether post-consumer waste or secondary  
17 waste, necessary to qualify a product as a recycled-content product. The standards shall:

- 18       ~~1. Be consistent with the USEPA and Washington State recycled-content standards;~~  
19       ~~unless the Director finds that different standards would significantly increase recycled-~~  
20       ~~content product availability or competition. In no case shall these standards be less~~  
21       ~~stringent than USEPA product standards;~~



2. ~~Place primary emphasis upon the percentage of post-consumer waste content and the recyclability of the product.))~~

1. Recycled content product. The content standards shall address required amounts of recycled materials. The content standards may break down recycled materials into specified required amounts of post-consumer waste and secondary waste. The required amount of recycled materials shall be:

a. For all products for which the USEPA adopts procurement guidelines under RCRA, the required amount of recycled materials shall be at least that amount as specified in the guidelines and shall change as the guidelines are updated and adopted.

b. For all other products, the amount of recycled materials shall be at least twenty-five percent (25%) of all materials contained in the product.

The content standards may address other items as deemed appropriate by the Director.

B. The recyclability of a material shall be determined by whether or not in-City collection systems are in place to divert the material from City solid waste for use as a raw material in the manufacture of another product or the reuse of the same product. The existence of regional markets and identifiable end uses for a material shall also be taken into consideration when determining the recyclability of a material.

C. The Director shall consult with the appropriate departments regarding technical and performance specifications for products in those situations where a department has specific expertise in the use of the product ~~((and/))~~ or the establishment of the product's performance specifications.



1 D. (~~By December 1, 1992, as part of the Recycled Content Procurement Plan identified~~  
2 ~~in Resolution 28556, the Director or his or her predecessor shall adopt recycled content standards~~  
3 ~~for the following products or product categories:~~

4 1. ~~Paper and paper products;~~

5 2. ~~Building insulation;~~

6 3. ~~Cement with fly ash;~~

7 4. ~~Lubricating oils;~~

8 5. ~~Latex paint;~~

9 6. ~~The following products containing recycled glass: glass plastic composite (GPC)~~  
10 ~~sewer pipe, terrazzo and ceramic tile;~~

11 7. ~~The following products containing recycled plastics: plastic lumber (park benches,~~  
12 ~~picnic tables, piles, caissons, decks, raised walkways, fences and gates, landscape~~  
13 ~~timbers, dimensional lumber and decking materials); traffic products (parking stops, bike~~  
14 ~~racks, speed bumps and wheel chocks); bathroom products (toilet compartments, shower~~  
15 ~~and dressing compartments); carpet and synthetic fiber cushions; and playground~~  
16 ~~equipment.~~

17 The Director shall adopt specifications for the following products or product categories:

18 1. ~~Retread tires;~~

19 2. ~~Compost; and~~

20 3. ~~Glass cullet including utility bedding, backfill, roadbase mix, landfill cover, and~~  
21 ~~wastewater filtrations mediums.~~

1 E)). The standards and specifications established pursuant to this section shall guide  
2 product purchasing by the Director and all departments. ~~((Under no circumstances shall the  
3 standards established pursuant to this section be less stringent than USEPA product standards))~~

4 ((F)) E. Standards established pursuant to this section shall be developed for any  
5 additional products for which either Washington State or USEPA recycled-content standards are  
6 developed in the future. In addition, the Director may, at his or her discretion, adopt content  
7 standards for products for which standards have not been established by Washington State or the  
8 USEPA.  
9

10 ~~((G. Existing procurement policies and specifications shall be revised to include recycled  
11 content products or recyclable products unless a recycled content product or recyclable product  
12 does not meet an established performance standard of a department. In such situations, a  
13 department must provide the Director with satisfactory evidence that, for technical reasons, and  
14 for a particular end use, a product containing such materials will not meet reasonable  
15 performance standards. Upon submittal of evidence satisfactory to the Director, a department will  
16 be granted a waiver by the Director. Such waiver shall not be granted for more than two (2) years  
17 without reissuance of a waiver within guidelines established by the Director.))~~

20 Section 7. Section 3.04.210 of the Seattle Municipal Code is amended as follows:

21 **3.04.210 Price preference.**

22 A. The Director shall adopt rules for applying a price preference toward the purchase of  
23 recycled-content products ~~((identified in SMC Section 3.04.208D))~~. The rules shall be  
24 applicable to purchases by the Director and all departments for those products identified in  
25 ~~((SMC Section 3.04.208D))~~ this chapter, as well as for other products for which content  
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standards are developed according to SMC Section 3.04.208((F)). The rules shall include a maximum price preference of ten (10) percent of the lowest and best bid or price quoted by suppliers offering products without recycled content for recycled content products (as defined in SMC Section 3.04.202), unless the Director determines that a different price preference is warranted based upon factors such as the prevailing market price, product availability, and product quality. The rules shall include a price preference of fifteen (15) percent of the lowest and best bid or price quoted by suppliers offering products without recycled content, for local recycled- content products (as defined in SMC Section 3.04.202 )((G)) unless the Director determines that a different preference is warranted based upon factors such as the prevailing market price, availability and product quality.

B. A price preference shall be applied only to those bids where a nonrecycled content product is determined to have the lowest and best bid and similar products with recycled content have also responded to the bid. Where the Director determines that the purchase of a recycled-content, recyclable or reusable product is practicable as defined in SMC Section 3.04.204, a price preference shall not be applied. Upon determination that the purchase of such a product is practicable, the Director shall require that recycled content, recyclability or reusability be required as specifications in any invitations to bid for that product.

~~((C. Prior to the adoption of rules under subsection A of this section, the departments may provide a maximum ten (10) percent price preference for a product that meets the USEPA product standards.))~~

Section 8. Subsection 3.04.216 C of the Seattle Municipal Code is amended as follows:

**3.04.216 Vendor certification of recycled material content**

\* \* \*

C. Products which meet certification rules and guidelines adopted by The State of Washington or USEPA shall be deemed to meet the requirements of this section.

Section 9. Subsection 3.04.222 C of the Seattle Municipal Code is amended as follows:

**3.04.222 CIP Projects.**

\* \* \*

C. All City departments shall change their standard specifications to include recycled-content products and materials ~~((listed in))~~ adopted pursuant to ~~((Subchapter III of))~~ this chapter.

Section 10. Section 3.04.224 of the Seattle Municipal Code is amended as follows:

**3.04.224 Responsibilities of the Director.**

The Director is responsible for:

A. Collecting data on purchases ~~((as a percent of total dollars purchased)))~~ by departments of recycled-content products, reusable products, and recyclable products on purchase orders;

B. Maintaining a directory of recycled-content products and recyclable products and vendors who carry these products;

C. Disseminating product information to departments ~~((, and creating and maintaining a "recycled content product sample showroom" that would be accessible for all departments and interested general public)))~~;





1 D. Developing and establishing rules, guidelines and specifications necessary to carry out  
2 these functions. ~~((implement and further the intent of this Subchapter III.))~~

3 Section 11. Section 3.04.201 of the Seattle Municipal Code is deleted in its entirety.

4 Section 12. This ordinance shall take effect and be in force thirty (30) days from and  
5 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)  
6 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.  
7

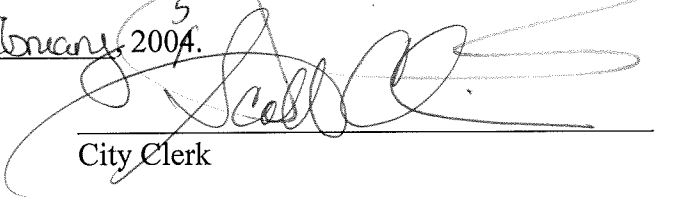
8  
9 Passed by the City Council the 24<sup>th</sup> day of January, 2004<sup>5</sup>, and signed by me in open  
10 session in authentication of its passage this 24<sup>th</sup> day of January, 2004<sup>5</sup>.  
11

12   
13 President \_\_\_\_\_ of the City Council

14 Approved by me this 2<sup>nd</sup> day of February, 2004<sup>5</sup>.

15   
16 Gregory J. Nickels, Mayor  
17

18 Filed by me this 2<sup>nd</sup> day of February, 2004<sup>5</sup>.

19   
20 City Clerk  
21

22 (Seal)  
23  
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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Executive Administration	Brenda Bauer/4-4525	Tyler Running Deer/4-8075

**Legislation Title:**

AN ORDINANCE related to The City of Seattle's purchasing programs and procurement of reusable products, recycled content products and recyclable products; amending definitions, clarifying that the City may adopt standards promulgated by Federal and State Agencies; clarifying roles and responsibilities, and amending reporting requirements; amending Seattle Municipal Code Chapter 3.04 in connection therewith; and recodifying SMC Ch. 3.04 Subchapter II Purchases and Subchapter III Recycled Content Product Procurement Program as SMC Ch. 20.60.

• **Summary of the Legislation:**

The proposed Council Bill relates to the City's "Buy Recycled" legislation, amending many sections of the Seattle Municipal Code so that our recycled products standards are consistent with current technology and practices. The legislation also recodifies the City's purchasing legislation from SMC Title 3 to SMC Title 20, "Public Works, Improvements and Purchasing," so that it is easier for City employees and citizens to find.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

The City's current ordinances related to the procurement of environmentally-friendly goods date were enacted in 1992. Since then, the market and product standards have changed substantially. The proposed legislation updates these ordinances to better tie procurement practices to the City's Environmental Management Program and Sustainable Purchase Policy, and to standards set by State and Federal Agencies. The attached briefing paper provides additional background and context for this legislation.

• *Please check one of the following:*

**X** **This legislation does not have any financial implications.**

**Please list attachments to the fiscal note below:**

Attachment A to Fiscal Note: Purchasing & Contracting Best Practices Initiative



## **Purchasing & Contracting Best Practices Initiative**

Enclosed is one of six ordinances making improvements in our contracting practices that will correct code errors, simplify processes, and create better options for our customers. Because a number of the issues are minor, they have not necessarily warranted separate legislation. By compiling a number of minor and moderate improvements to our programs into one initiative, we believe the total positive effect will be very valuable. The six ordinances below are part of our "best practices" initiative.

### **Buy Recycled Ordinance Amendments**

The City's recycled content product procurement program is detailed in SMC Ch. 3.04.200. Although the mission of the program is still very much applicable, many of the specifics of the ordinance are out of date in today's world of sustainability and environmentally responsible purchasing opportunities. The current ordinance is restrictive in its specificity of product types which reflected industry trends in 1992. Reporting requirements are frequently unattainable within the constraints of Summit and staff resources. Designated responsibilities for the DEA Director, such as development of product standards, appear better positioned in departments with the associated line of business knowledge and expertise, for example, the Office of Sustainability and Environment (OSE) and Seattle Public Utilities (SPU).

This is a rapidly changing market with new recycled content products and applications being developed and prior usage avenues disappearing. In conjunction with OSE and SPU, we have proposed amendments to this legislation which would allow increased flexibility for this program to stay abreast with new opportunities and challenges in the recycled content business arena.

### **Small Public Works/Ordinary Maintenance**

This ordinance would allow an inflation adjustment to the dollar value of public works that the Director of Executive Administration may authorize other departments to administer in order to create consistent thresholds for delegated contracting authority. The Department currently has the authority to delegate small procurements to departments to minimize unnecessary administrative processes, and most thresholds for delegation authority are tied to inflation. Our Direct Voucher (DV) threshold for goods and services just went from \$5,000 to \$6,000 based on the change in the CPI. However, the Small Public Works/Ordinary Maintenance threshold remains at \$5,000 since it lacks a CPI adjuster. We believe having consistent thresholds for delegation across different types of buying practices reduces misunderstanding and promotes consistent administrative processes by departments. Therefore, we would raise the SPW/OM delegated authority to \$6,000 this year and tie it to the same inflator as the DV threshold.

### **Consultant Contracting Program Amendments**

The Copernicus project recommended that the Department of Executive Administration modify or eliminate legislation that unnecessarily encumbers the City's contracting process



The proposed changes to the consultant program are compelling, in particular, because the current ordinance leaves roster thresholds unclear, and does not allow the City to take advantage of favorable terms for contracts entered into by the State or other entities, or where economies of scale would allow for more leverage in buying consultants.

Additionally, removing administrative rule provisions from the municipal code that are inconsistent with our latest technology and practices will reduce department time in complying with "process without value." This allows the department to create administrative rules and processes that are consistent with current needs and that can more easily be updated. Finally, a provision allowing for confidentiality, for matters where attorney client privilege is at risk from a public advertisement process, is an important issue for some of our customers.

#### *Basic Consultant Contracting Program*

The City's process for acquisition of consultant services is described by SMC Ch. 3.114. The provisions that are recommended for change are described below in more detail.

Attorneys: Legal advisors/attorneys are included under the definition of "consultant." Because even the nature of the advice being sought from consultant attorneys can be sensitive or privileged and confidential, we would like to eliminate the requirement that requests for consultant legal advisors be publicly and competitively advertised where such public request for proposals could compromise the City's interests or affect attorney-client privilege. For example, advertisement of the nature of the work sought might be detrimental where the City was anticipating a lawsuit and wished to receive legal advice without publicly noting the possibility of litigation. In cases, like for example "Bond Counsel," where the nature of the legal advice is not confidential, the City would continue to advertise for services.

Filing & Performance Reviews: The Seattle Municipal code requires the filing of a xeroxed copy of executed consultant contracts with DEA, and a copy of consultant performance reviews. DEA does not perform any substantive review of these copies, and receives them irregularly. Original agreement copies are filed with the City Clerk, so there is little value in having copies filed with DEA. Similarly, departments are still required to keep the consultant evaluations with the project files, and filing copies with DEA is of minimal value. Although the copy filing requirements are not terribly burdensome, the requirements are not ones that seem necessary to retain.

Cooperative Buying Agreements: Currently, our consultant contracting ordinance does not contemplate our use of other governmental rosters or cooperative buying arrangements. In 1996, we amended our purchasing ordinance to allow for cooperative buying of goods, supplies and non-consultant services. Similar arrangements are available for consulting services. The City might want to take advantage of these agreements by piggybacking onto these existing contracts. Also, some national non-profit organizations enhance state and local buying power by making joint consultant services agreements available to local entities.



For example, for more than thirty years Public Technology, Inc. (PTI) has been available as a national, non-profit organization "dedicated to bringing the benefits of technology to all cities and counties in the United States." The organization was originally sponsored by local entities, and membership gives access to "blanket" contracts for services.

Modifications, similar to those made in 1996 to our goods and services buying ordinance, would allow us to take advantage of the buying power of other entities for consultant services as appropriate.

*Consultant Roster Program; Correcting a Codifying Error*

An error was made in the codification process for an amendment made to the Consultant Roster program ordinance in 1999. The Consultant Roster program has a maximum dollar value for contracts issued under the program of \$200,000 as adjusted by the Consumer Price Index/CPI. It also allows for amendments to individual agreements in an amount not to exceed 25% of the maximum dollar limit. However, the codifying error resulted in the law reading as though amendments can only be a maximum 25% over the original contract value, rather than the total program limit, which was not intended by the department or Council.

This unintended error would be corrected, avoiding problems departments experience in attempting to amend initially small agreements up to the maximum program value. Currently, the practical effect is that some departments are entering into second or third agreements with the same consultant about the same project, which is a significant administrative burden. It would be more sensible to simply correct the error.

**Post Initiative 200 Modifications to Programs**

The new "Equality in Contracting" ordinance includes much stronger and detailed minority outreach requirements for contracts, and allows the City to tailor contract language to particular opportunities on projects and to different types of activities. It requires the development of detailed outreach plans and implementation of strong affirmative efforts to assist women and minority employees and women and minority owned businesses in our contracting, and prohibits the City from doing business with contractors that discriminate.

This bill combines the critical provisions of two older ordinances, portions of which are now of questionable validity after Initiative 200. The bill will preserve and update provisions allowing the City to assist contractors and community agencies to accomplish diversity program efforts and give greater power to the Director of Executive Administration to evaluate compliance, terminate agreements for non-compliance, and to disbar offenders. The older ordinances that would be combined and updated are described below.

*Chapter 20.44 City Contracts -- Prevention of Discrimination*

No substantive amendments have been made to this affirmative action ordinance since 1972, except to add new protected classes. The law requires that departments insert very specific contract language into contracts.





The language is thirty years old, contains some provisions that are vague and probably unenforceable, and is a frequent point of contention in contracting. It also requires contractors to take certain actions with regard to purchasing contracts in advance of contracting, which logically and practically are difficult to accomplish.

Also, the law has not been reviewed since Initiative 200 to redact those requirements that may not be consistent with the current State law. We have judiciously used the exception within the law allowing the DEA department head to use alternative provisions. However, because of the older phrasing of the language in this ordinance, it frequently becomes a contentious issue in contract negotiations. It is legally flawed in that it requires contractors to engage in affirmative action in employment where we have not completed a disparity study required by the U.S. Supreme Court in Croson in 1989, and now is in violation of I-200. Attorneys for contractors regularly note this to us. The pre-qualification process outlined for compliance for purchasing goods and services is not practical given the volume of procurements we perform. It is more practical to evaluate only the apparent low or successful bidder's compliance, having made clear our non-discrimination and minority outreach requirements when the bid was advertised.

Our proposed ordinance re-writes this law to take into consideration our more contemporary ordinances, like the "Non-discrimination in Contracting Ordinance," to address post I-200 conflicts. More importantly, it makes a strong statement about diversity and outreach requirements without specifying particular language that must be incorporated into the contracts. This would give the City the necessary flexibility to manage contract language related to outreach and affirmative efforts in keeping with changing contracting practices and current cases and legislative decisions.

#### *Chapter 20.46A Women's and Minority Business Enterprise Utilization*

No substantive amendments have been made to this affirmative action ordinance since 1994. Also, the law has not been reviewed since Initiative 200 to redact those requirements that may not be consistent with current State law. Since the dominant portion of the law addresses specific affirmative action preference requirements that are no longer permissible, the surviving portions of the law related to outreach and affirmative efforts are scattered and not cohesive, and therefore would be difficult to enforce. We have combined the surviving provisions of this law with the prior ordinance to specifically lay out the aggressive outreach and affirmative efforts we believe the City should take in contracting.

We believe the best strategy is to combine the two "affirmative action" ordinances related to contracting into one new code section addressing these important concerns. We have reviewed the ordinance with the Mayor's committee reviewing Post-Initiative 200 options and with staff involved in the Race & Social Justice Initiative. Both groups are support of this approach and believe it is complimentary to their efforts.

## **Contractor Debarment Process**

Over time, the Board of Public Works' (BPW) duties evolved and the agency was eventually abrogated, with the various functions distributed to different departments. The authority to debar contractors and subcontractors for poor performance did not legislatively transfer to DEA (DAS at the time), the agency charged with managing purchasing and construction contracting, and the process for consultant contracting. This ordinance would recreate the authority to debar contractors that fail to meet their City agreement obligations. The bill would provide a necessary tool for the City to manage contractor performance, and allows us to do business with only those contractors who are responsible and fulfill their contractual commitments. The debarment authority would be available for our various buying programs, including vendors, service contractors, construction, and consultant contractors.

Although the process is obviously used only rarely, it provides, a negotiating position in working with difficult contractors, and in the worst case, a way for the City to formally deny the acceptance of bids from certain contractors for a specific period of time. Contractors applying to work on public and private projects are often asked to disclose whether or not any agency has debarred them, and therefore, the threat of debarment is a serious matter.

As recently as the last couple of years, we have proposed to contractors a "voluntary agreement not to bid" in lieu of formal "debarment" to avoid working with substandard performers. To address our legal and process concerns, we would like to propose legislation that would set out a formal City debarment process. This is one piece in what we are hoping will be a more aggressive evaluation process for contract performance to avoid the "lowest & worst bid" outcome.

## **Hearing Examiner Protests**

In 1995, the City abrogated the Contracting Appeals Board. One of its functions was to hear appeals related to bidding decisions. Instead, the Hearing Examiner was assigned to review, on appeal, bidding decisions and provide an "advisory only" ruling to the Director of DEA.

Since 1995, there have been only a handful of appeals to the Hearing Examiner. In the most recent Purchasing Services appeal, it appeared that the appealing bidder (the current contractor) had, in other states, routinely used all appeal processes in order to delay the award of any contracts to other vendors. By doing so, the contractor had added months to their existing, but terminating agreements, while appeals were exhausted and resolved. On all of the four appeals thus far, the decision of the Hearing Examiner supported the decisions of DEA.

Although managing a handful of appeals in eight years has not been on its face burdensome, our experience with departments on bidding decisions reveals an additional layer of significant concern. Particularly for construction, we are finding that departments



are unwilling, when faced with the mere possibility that a bidder might appeal, to forgo the time and resources that would be necessary to go through a formal Hearing Examiner appeals process. Instead, they end up requesting that we reject all bids and start the bidding process over. This is a layer of unnecessary administrative process which is costly and delays contracting.

Contracting staff are adept at handling bidding disputes, are the subject matter experts, and can resolve most concerns informally. For those contractors and vendors who are still dissatisfied, they can take advantage of a formal appeal to the DEA Director or they may file a complaint in Superior Court. There is also a risk of an advisory opinion by one City agency against the decision of another, and how that might affect the City's legal position in court. This is not an area of law or policy where such review is necessary or appropriate.

We met with and reviewed the practice/ordinance change with the former acting Hearing Examiner, Margaret Klockars, who has since returned to her position as the Director of the Land Use Section of the Law Department. She spoke with the prior Hearing Examiner, Meredith Getches, and both agreed with our analysis of the issue. Additionally, we met with the new permanent Hearing Examiner, Sue Tanner, and one of the Office's long term deputies, Anne Watanabe, who also agreed with our approach; that for bid decisions, the Hearing Examiner did not add value to the decision process, and possibly added legal risk to the City.

### **Re-codification**

Title 20 of the Seattle Municipal Code was set-aside for "Public Works, Improvements and Purchasing." The purpose of publishing the Municipal Code is to allow citizens access to important laws. Over the years, various portions of the City's procurement laws have been located in places scattered throughout the code and have been difficult to locate. Both our internal city customers, as they are trying to determine the appropriate process to buy needed goods and services, and citizens, who are wanting to understand how the City procures, could better locate that information if it was consolidated in the Title reserved for buying legislation. Therefore, all of these "Best Practices" bills that contain code provisions that are not already located in Title 20 include a provision to move the provisions to this central location.

### **Conclusion**

In summary, out of date laws and practices do not serve the City well; by condensing provisions, eliminating minutiae, and updating the code consistent with contemporary practices, the City provides departments and the citizenry with more potent and readily available tools. Attached are the bills described above. If you have any questions, please feel free to call Ken Nakatsu or Brenda Bauer.

cc: Budget & Finance Council Committee  
Regina LaBelle, Mayor's Office





# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

September 14, 2004

Honorable Jan Drago  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

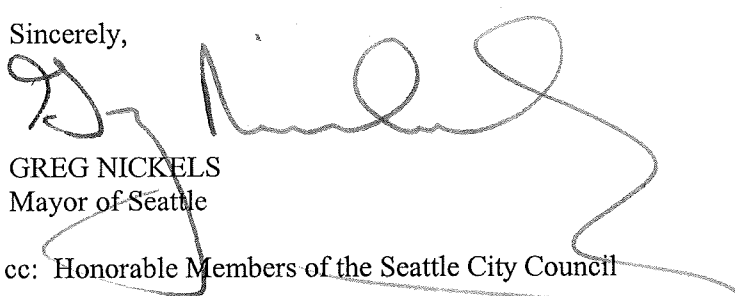
Dear Council President Drago:

I am pleased to transmit the attached proposed Council Bill related to the City's Buy Recycled legislation. The legislation will modernize our recycled products standards to be consistent with today's technology and practices. The market and standards related to environmentally friendly goods have changed substantially since the current ordinances were passed in 1992. The proposed revisions will better tie procurement practices to the City's Environmental Management Program and Sustainable Purchase Policy, and to standards set by State and Federal Agencies. Additionally, we have proposed relocating the City's purchasing legislation to Title 20 of the Seattle Municipal Code, which is reserved for "Public Works, Improvements and Purchasing," so that the provisions are easier to locate.

This legislation continues the progress we have made in improving City buying practices, which started with the Copernicus Commodity Team program. It is one of six companion Bills designed to reduce burdensome, unnecessary and/or outdated administrative processes; to allow the City to more aggressively pursue its social equity goals; and to eliminate provisions that hinder the City's ability to effectively procure goods and services. A detailed briefing paper describing this "Best Purchasing & Contracting Practices Initiative" is attached to the fiscal note.

The proposed legislation will improve the City's procurement of goods and services consistent with sound environmental and sustainability standards. Thank you for your consideration of this legislation. Should you have questions, please contact Ken Nakatsu at 684-0505 or Brenda Bauer at 684-4525.

Sincerely,



GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E:mail: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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181767  
CITY OF SEATTLE, CLERKS OFFICE

No.

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121720 ORD IN FULL

was published on

2/7/2005

*Michael*

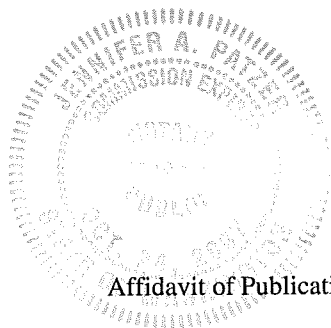
Subscribed and sworn to before me on

2/7/2005

*Jennifer A. Frazier*

Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication





# State of Washington, King County

## City of Seattle

### ORDINANCE 121720

AN ORDINANCE related to the City's purchasing programs and procurement of reusable products, recycled content products and recyclable products; amending definitions; clarifying that the City may adopt standards promulgated by Federal and State Agencies; clarifying roles and responsibilities; amending reporting requirements; amending Seattle Municipal Code Chapter 3.04 in connection therewith; and recodifying SMC Ch. 3.04 Subchapter II Purchases and Subchapter III Recycled Content Product Procurement Program as SMC Ch. 20.60.

WHEREAS, in 1992 Resolution 28556 and Ordinance 116270 established policies, procedures and programs to encourage and increase the procurement of recycled content products and recyclable products; adding new sections to SMC Chapter 3.18 and amending SMC Sections 3.18.806 A, 3.18.810 and 3.18.826; and

WHEREAS, unless there is sufficient market demand for recycled content products, recycling collection programs will ultimately fail to achieve the objective of diverting large portions of the waste stream from disposal; and

WHEREAS, the City finds it desirable to continue to implement a procurement policy promoting the purchase and use of reusable products, recycled content products, and recyclable products, thereby helping to develop markets for materials that have been diverted from the solid waste stream; and

WHEREAS, SMC Chapter 3.04 has not been substantially reviewed and updated since 1992; and

WHEREAS, amendments to this ordinance are necessary to clarify the role of the administering Director, update mechanisms to adopt content standards, and clarify reporting requirements; and

WHEREAS, this ordinance articulates policy linkages to the City's Environmental Management Program and Sustainable Purchase Policy; and

WHEREAS, the City's purchasing legislation is currently located in SMC Ch. 3.04 and within the powers and duties of the Department of Executive Administration; and

WHEREAS, Title 20 of the Seattle Municipal Code was set-aside for "Public Works, Improvements and Purchasing" and the purpose of publishing the Code is to allow citizens access to important laws; and

WHEREAS, citizen access to information about the City's purchasing authority would be improved by relocating the Code to Title 20; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Chapter 3.04 Subchapters II & III (SMC 3.04.100 through SMC 3.04.226) of the Seattle Municipal Code is re-designated Chapter 20.60 of the Seattle Municipal Code. The Code Reviser is authorized and directed to make ministerial changes to the Municipal Code, consistent with direction from the Department of Executive Administration, to implement the re-codification of this ordinance and to make reference changes throughout the Municipal Code following and in accordance with the amendments herein.

Section 2. Subsection 3.04.200 C of the Seattle Municipal Code is amended as follows:

#### 3.04.200 Purpose.

The purpose of this program is to:

\*\*\*

C. ((Provide)) Adopt content standards for recycled content and recyclable products for use in procurement programs by all departments;

fidavit

C. ((Provide)) Adopt content standards for recycled content and recyclable products for use in procurement programs by all departments;

Section 3. Section 3.04.202 of the Seattle Municipal Code is amended as follows:

### 3.04.202 Definitions.

((1)) "Building insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned volume of a building and adjacent unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill insulation that are used as ceiling, floor, foundation, and wall insulation.

This term also includes insulation products used to improve the thermal effectiveness of building envelopes, but does not apply to insulation for air-handling units, insulation for acoustic purposes, or cold-storage insulation unless otherwise designated by the Director or his or her predecessor.

2. "Cement" means a powder-like manufactured mineral product, often referred to as "Portland cement," used in the manufacture of cement concrete.

3. "Cement concrete" means concrete which contains cement.

4. "Cement with fly ash" means cement or cement concrete containing amounts of fly ash as determined by USEPA product standards.

((5)) 1. "City solid waste stream" means any solid waste created or generated within City limits whether residential or nonresidential.

((6)) "Compost" means the biological and manual conversion of yard wastes, food wastes, clean wood wastes, woody-land-clearing debris and manure, whether source-separated or mixed, into a humus-like material.

((7)) 2. "Content standards" means standards ((set or)) adopted by the Director ((or his or her predecessor)) pursuant to SMC 3.04.208 for the purpose of specifying ((the minimum)) content ((of recycled materials; whether post-consumer waste or second-ary waste, in a product necessary for the)) requirements that must be satisfied before a product ((to qualify as)) may be deemed a recycled content product or a recyclable product. The ((E)) content standards may address categories of products or particular products ((also specify that a product be made in whole or in part from recyclable materials, and the maximum level of hazardous substances allowable in a product)).

((8)) 3. "Contractor" means persons or companies contracting with the City for the purchase of any supplies, materials, equipment or service. This definition does not include contracts for services in connection with:

a. The acquisition of real property and property rights;

b. Processing of claims; and

c. All litigation of the City or in which the City or any of its departments may be interested.

((9)) "End use" means an intended final use of a product by a consumer which will not result in additional value being added to the product.

10. "Fly ash" means the finely divided mineral residue which results from the combustion of coal, and which is typically collected from boiler stack gases by electrostatic precipitation or mechanical collection devices.

11. "Food waste" means the organic residues generated by the handling, storage, sale, preparation, cooking and serving of foods.

12. "Hazardous substance" means any hazardous substance listed as a hazardous substance pursuant to Section 315 of Title III of the Superfund Amendments and Reauthorization Act; all ozone-depleting compounds as defined by the Montreal Protocol of October 1987; and such other substances adopted by rule by the Director or his or her predecessor as presenting a threat to human health or the environment.

((13)) 4. "Local recycled content product" means such product or products that are derived from recycled materials recovered from City solid waste, provided the material be reasonably traced back to its generation within City limits. Such products must contain a minimum of twenty-five percent (25%) recycled materials except in those cases where the U.S. Environmental Protection Agency has adopted procurement guide-

Section 4. Section 3.04.204 of the Seattle Municipal Code is amended as follows:

### 3.04.204 Policies.

A. All departments shall use, where practicable, reusable products, recycled content products and recyclable products. The term "practicable" shall mean that the product performs adequately for its intended use and is available at a fair and reasonable price. ((C))

1. The recycled content product meets product specifications established by the Director;

2. The recycled content product is available from at least one vendor in sufficient quantity to meet City needs.

B. The City shall require, whenever practicable, its vendors, contractors and consultants to use recycled content paper on all documents submitted to the City. In addition, the vendors, contractors, and consultants to use and recycle products, recycled-content products contractor, or consultant to specify how it will comply this requirement may cause the City to determine that a bid is non-responsive.

C. The City shall maintain minimum content standards for the purchase of designated products, as consistent with USEPA and Washington State products and standards, ((establish the following goals, at a minimum, for the purchase of recycled content paper products, compost products, and re-refined lubricating oil products:

1. Recycled content paper products as a percentage of the total dollar amount of paper products purchased on an annual basis:

a. At least forty (40) percent by 1993;

b. At least fifty (50) percent by 1994;

c. At least sixty (60) percent by 1995;

2. Compost products as a percentage of the total dollar amount of soils purchased on an annual basis:

a. At least twenty-five (25) percent by 1993;

b. At least fifty (50) percent by 1995;

c. At least sixty (60) percent by 1997;

3. Rerefined lubricating oil for use in all City vehicles, including trucks and heavy equipment, and all hydraulic lifts, as a percentage of the total dollar amount of lubricating oils purchased on an annual basis:

a. At least fifty (50) percent by 1994;

b. At least eighty (80) percent by 1995.

D. The Director ((shall)) may use recycled material content as a factor in determining the lowest and best bid in its procurement of goods and materials.

E. The Director shall promote the use of recycled content products and recyclable products to potential vendors to the City by publicizing ((their availability)) that the City emphasizes the use of environmentally preferable products by its contractors.

F. The Director, through the procedures set forth in SMC Chapter 3.02, is authorized to establish guidelines ((and)) or rules to further the intent of this section and ordinance.

G. ((All terms, conditions and requirements of)) This section shall apply equally to the Director and any department when it acts to acquire any aspects of public works for the City.

H. These policies are intended to ((follow guidelines established by the United States Environmental Protection Agency for preference)) be compatible with the strategies and standards of the City's environmental management and sustainable purchasing programs.

I. Existing procurement policies and specifications shall be revised to include recycled content products.

((and)) or the establishment of the product's performance specifications.

D. ((By December 1, 1992, as part of the Recycled Content Procurement Plan identified in Resolution 28556, the Director or his or her predecessor shall adopt recycled content standards for the following products or product categories:

1. Paper and paper products;

2. Building insulation;

3. Cement with fly ash;

4. Lubricating oils;

5. Latex paint;

6. The following products containing recycled glass: glass-plastic composite (GPC) sewer pipe, terrazzo and ceramic tile;

7. The following products containing recycled plastics: plastic lumber (park benches, picnic tables, piers, caissons, decks, raised walkways, fences and gates, landscape timbers, dimensional lumber and decking materials); traffic products (parking stops, bike racks, speed bumps and wheel chocks); bathroom products (toilet compartments, shower and dressing compartments); carpet and synthetic fiber cushions; and playground equipment.

The Director shall adopt specifications for the following products or product categories:

1. Retread tires;

2. Compost; and

3. Glass cullet including utility bedding, backfill, roadbase mix, landfill cover, and wastewater filtrations mediums.

E). The standards and specifications established pursuant to this section shall guide product purchasing by the Director and all departments. ((Under no circumstances shall the standards established pursuant to this section be less stringent than USEPA product standards))

((F)) E. Standards established pursuant to this section shall be developed for any additional products for which either Washington State or USEPA recycled-content standards are developed in the future. In addition, the Director may, at his or her discretion, adopt content standards for products for which standards have not been established by Washington State or the USEPA.

((G)) Existing procurement policies and specifications shall be revised to include recycled content products or recyclable products unless a recycled content product or recyclable product does not meet an established performance standard of a department. In such situations, a department must provide the technical reasons, and for a particular end use, a product containing such materials will not meet reasonable performance standards. Upon submittal of evidence satisfactory to the Director, a department will be granted a waiver by the Director. Such waiver shall not be granted for more than two (2) years without reissuance of a waiver within guidelines established by the Director.

Section 7. Section 3.04.210 of the Seattle Municipal Code is amended as follows:

### 3.04.210 Price preference.

A. The Director shall adopt rules for applying a price preference toward the purchase of recycled-content products ((identified in SMC Section 3.04.206D)). The rules shall be applicable to purchases by the Director and all departments for those products identified in ((SMC Section 3.04.206D)) this chapter, as well as for other products for which SMC Section 3.04.208 ((F)) the rules shall include a maximum price preference of ten percent of the lowest and best bid or price quoted by suppliers offering products without recycled content for recycled content products ((as defined in SMC Section 3.04.202)), unless the Director determines that a different price preference is warranted based upon factors such as the prevailing market price, product

lines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901 et seq.) ("RCRA"). In those cases, the minimum content of recycled material shall not be less than specified in the most current adopted issue of those guidelines.

((14. "Lubricating oils" means petroleum based oils for reducing friction in engine parts and other mechanical parts.

15. "Mixed waste paper" means assorted grades of paper that have not been separated into individual grades of paper before being processed for use in the manufacture of new products.))

((16)) 5. "Paper and paper products" means all items manufactured from paper or paperboard.

((17. "Post-consumer paper" means:

a. Paper, paperboard and fibrous wastes which have passed through their end use as consumer items; including corrugated boxes, newspapers, magazines, mixed waste paper, tabulating cards, and used cordage from places like retail stores, offices buildings and homes; and

b. All paper, paperboard and fibrous wastes that are collected as mixed municipal solid waste and later separated at a processing facility.

c. This definition does not include those paper materials generated from, and commonly reused within, an original manufacturing process such as mill broke or fibrous byproducts of harvesting, extractive or wood-cutting processes, or forest residue such as bark.))

((18)) 6. "Post-consumer waste" means solid waste, including yard waste, ((which)) that has passed through its end use as a consumer item and is suitable as feedstock in product manufacture.

((19)) 7. "Purchase ((order)) contract" means any contract or order which is duly authorized and awarded or entered into by the Director or a department for the purchase of tangible goods.

((20)) 8. "Recyclable product" means a product or package made from a material for which curbside or drop-off collection systems are in place for a majority of City residents ((and/or)) businesses, to divert from City solid waste for use as a raw material in the manufacture of another product or the reuse of the same product.

((21)) 9. "Recycled content product" means a product containing a minimum of twenty-five percent (25%) recycled materials except in those cases where the U.S. Environmental Protection Agency has adopted procurement guidelines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901 et seq.). In those cases, the minimum content of recycled material shall not be less than specified in the most current adopted issue of those guidelines.

((22)) 10. "Recycled materials" means post-consumer waste ((and/or)) secondary waste that has been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product.

((23. "Refined oils" means used lubricating oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process. Re-refining may include distillation, hydrotreating or treatment employing acid, caustic, solvent, clay or other chemicals, or other physical treatments than those used in reclaiming.

24. "Retread tire" means a worn automobile, truck, or other motor vehicle tire, excluding airplane tires, whose tread has been replaced.))

((25)) 11. "Reusable product" means a product that can be used several times for an intended end use before being discarded, such as a washable food or beverage container or a refillable ballpoint pen.

26. "Secondary paper waste" means paper waste generated after the completion of a paper or paper product making process, such as envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, bud rolls, mill wrappers, and obsolete inventories, rejected unused fibrous waste generated during the manufacturing process such as fibers recovered from waste or trimmings of paper machine rolls, (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residue such as bark.

((27)) 13. "Secondary waste" means waste resulting from a part of a manufacturing process that, unless incorporated as a feedstock in product manufacture, must be disposed of as solid or hazardous waste.

((28)) 14. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, except wastes identified in WAC 173-304-015, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, discarded commodities, sludge from wastewater treatment plants and septage from septic tanks, wood waste, dangerous waste, and

unusable products of any process, unless the products do not meet an established performance standard of a department. In such situations, a department must provide the Director with satisfactory evidence that, for technical reasons, and for a particular end use, a product containing such materials will not meet reasonable performance standards.

Section 5. Section 3.04.206 of the Seattle Municipal Code is amended as follows:

#### 3.04.206 Annual report.

((A. Beginning March 15, 1994, t)) The Director shall provide an annual report to the City Council ((on or before March 15th of)) each year on the ((progress of implementation of the Recycled Content Product Program required in Resolution 295666)) status of buy recycled activities. This report shall include data on the City's purchase of recycled content products, recyclable products, and reusable products. The Director may require periodic reporting by other departments to the Department of Executive Administration for the purpose of developing this report.

((B. The Director shall compile records of purchases by departments for inclusion in the annual report. The report shall include all purchases in excess of One Thousand Dollars (\$1,000). At a minimum, the report will include the following components:

1. The percentage of post-consumer and/or secondary waste in any recycled-content products actually purchased;

2. Price information comparing the cost of recycled content products to similar virgin products where applicable;

3. Information identifying the quantity of recycled content products procured over a fiscal year as well as the percentage of total purchase dollars spent on recycled-content products within a given product category;

4. The availability of recycled content products;

5. The type of performance tests conducted on recycled content products and the nature of test failures, if any;

6. Department experience with the performance of recycled-content products;

7. Recommendations for changes in the Recycled Content Product Procurement Program, including recycled-content standards for additional products;

8. A discussion of potential products or product categories for which recycled content standards might be developed in the future;

9. A comparison of the performance of The City of Seattle's Recycled Content Product Procurement Program with other relevant jurisdictions;

C. Beginning February 1, 1994, each department shall report its actions to comply with the Recycled Content Procurement Program to the Director by February 1st of each year.))

Section 6. Section 3.04.208 of the Seattle Municipal Code is amended as follows:

#### 3.04.208 Standards for recycled content.

A. The Director ((or his predecessor)) shall ((set or)) adopt standards that specify ((the)) minimum ((level of)) recycled content, recyclability, reusability, or other aspects of environmental preferability, consistent with the U.S. Environmental Protection Agency ("USEPA"), Washington State standard, and any City environmental management plan. In no case shall these standards be less stringent than USEPA standards. In addition, the Department may adopt standards for products that have not been addressed by USEPA or Washington State. The standards shall place primary emphasis upon the percentage of post-consumer waste content and the recyclability of the product. ((materials, whether post-consumer waste or secondary waste, necessary to qualify a product as a recycled-content product. The standards shall:

1. Be consistent with the USEPA and Washington State recycled-content standards, unless the Director finds that different standards would significantly increase recycled-content product availability or competition. In no case shall these standards be less stringent than USEPA product standards;

2. Place primary emphasis upon the percentage of post-consumer waste content and the recyclability of the product.))

1. Recycled content product. The content standards shall address required amounts of recycled materials. The content standards may break down recycled materials into specified required amounts of post-consumer waste and secondary waste. The required amount of recycled materials shall be:

a. For all products for which the USEPA adopts procurement guidelines under RCRA, the required amount of recycled materials shall be at least that amount as specified in the guidelines and shall change as the guidelines are updated and adopted.

b. For all other products, the amount of recycled materials shall be at least twenty-five percent (25%) of all materials contained in the product.

availability, and product quality. The rules shall include a price preference of fifteen (15) percent of the lowest and best bid or price quoted by suppliers offering products without recycled content, for local recycled-content products (as defined in SMC Section 3.04.202) ((;)) unless the Director determines that a different preference is warranted based upon factors such as the prevailing market price, availability and product quality.

B. A price preference shall be applied only to those bids where a nonrecycled content product is determined to have the lowest and best bid and similar products with recycled content have also responded to the bid. Where the Director determines that the purchase of a recycled-content, recyclable or reusable product is practicable as defined in SMC Section 3.04.204, a price preference shall not be applied. Upon determination that the purchase of such a product is practicable, the Director shall require that recycled content, recyclability or reusability be required as specifications in any invitations to bid for that product.

((C. Prior to the adoption of rules under subsection A of this section, the departments may provide a maximum ten (10) percent price preference for a product that meets the USEPA product standards.))

Section 8. Subsection 3.04.216 C of the Seattle Municipal Code is amended as follows:

#### 3.04.216 Vendor certification of recycled material content

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C. Products which meet certification rules and guidelines adopted by The State of Washington or USEPA shall be deemed to meet the requirements of this section.

Section 9. Subsection 3.04.222 C of the Seattle Municipal Code is amended as follows:

#### 3.04.222 CIP Projects.

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C. All City departments shall change their standard specifications to include recycled-content products and materials ((if not adopted pursuant to ((Subchapter III of)) this chapter.

Section 10. Section 3.04.224 of the Seattle Municipal Code is amended as follows:

#### 3.04.224 Responsibilities of the Director.

The Director is responsible for:

A. Collecting data on purchases ((as a percent of total dollars purchased)) by departments of recycled-content products, reusable products, and recyclable products on purchase orders;

B. Maintaining a directory of recycled-content products and recyclable products and vendors who carry these products;

C. Disseminating product information to departments ((; and creating and maintaining a "recycled-content product sample showroom" that would be accessible for all departments and interested general public);

D. Developing and establishing rules, guidelines and specifications necessary to carry out these functions ((implement and further the intent of this Subchapter III.))

Section 11. Section 3.04.201 of the Seattle Municipal Code is deleted in its entirety.

Section 12. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 2nd day of January, 2005, and signed by me in open session in authentication of its passage this 2nd day of January, 2005.

JAN DRAGO,

President of the City Council.

Approved by me this 2nd day of February, 2005.

GREGORY J. NICKELS,

Mayor.

Filed by me this 2nd day of February, 2005.

(Seal) JUDITH PIPPIN,

City Clerk.

Publication ordered by Judith Pippin, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, February 7, 2005.

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