

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AN AMENDMENT TO CITY COUNCIL POLICY NO. 4-6 REGARDING ENVIRONMENTALLY PREFERABLE PROCUREMENT TO INCLUDE SHORT-LIVED CLIMATE POLLUTANTS: ORGANIC WASTE REDUCTIONS REGULATIONS PROCUREMENT REQUIREMENTS AND MINOR UPDATES TO OUTDATED SECTIONS

WHEREAS, on September 25, 2001, the City Council of the City of San José (“City”) adopted Council Policy 4-6, the Environmentally Preferable Procurement Policy (EP3), which policy was later revised on March 20, 2007, November 17, 2009, and April 12, 2012 (“Policy”); and

WHEREAS, in a statewide effort to reduce emissions of short-lived climate pollutants, Senate Bill (“SB”) 1383, Short-lived Climate Pollutants: Organic Waste Reductions (“SLCP”), was signed into law in 2016 and went into effect on January 1, 2022; and

WHEREAS, SB 1383 Regulatory Text, as contained in 14 CCR Division 7, Chapter 12, Article 12, requires the City to purchase recycled-content paper products, procure recovered organic waste products to support organic waste disposal reduction targets, and increase markets for products made from recycled and recovered organic waste materials; and

WHEREAS, on November 3, 2021, City approved amendments to Chapter 9.10, Title 9 of the San José Municipal Code to comply with SLCP Regulations; and

WHEREAS, the Policy provides standard language citywide for procurements and contracts where applicable; and

WHEREAS, to comply with the SLCP Regulations and recently updated Chapter 9.10, Title 9 of the San José Municipal Code, the Policy requires an update to include SLCP Regulations as one of the Policy’s environmental product standards; and

WHEREAS, the City desires to adopt a revised City Council Policy No. 4-6 to replace the previous City Council Policy No. 4-6, to further expand its leadership in the area of environmentally preferable purchasing and elicit changes in the marketplace;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Council Policy No. 4-6 entitled, “Environmentally Preferable Procurement Policy,” which policy is attached hereto as Exhibit “A” and incorporated herein by this reference as though fully set forth herein, is hereby approved and shall, as of the date and time of adoption of this Resolution, supersede City Council Policy 4-6, approved by the City Council on September 25, 2001 and revised subsequently on March 20, 2007, November 17, 2009, and April 12, 2012.

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ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

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City of San José, California

COUNCIL POLICY

TITLE	ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY (EP3)	PAGE	1 of 5	POLICY NUMBER	4-6
EFFECTIVE DATE	September 25, 2001	REVISED DATE	<u>XXXXXX</u>		
APPROVED BY COUNCIL ACTION	Revised 3/20/2007, Item 7.3(b), Res. No. 73700; 11/17/2009, Item 7.2(b), Res. No. 75177; 4/12/2012, Item 2.13(b), Res. No. 76203; <u>12/13/2022, Item 2.15, Res. No. XXXXX</u>				

PURPOSE

It is the goal of the City of San José (City) to utilize its purchasing power to influence commerce to offer goods and services with better environmental performance, and to procure products and services from manufacturers and suppliers that demonstrate a high level of environmental and social responsibility.

By incorporating environmental considerations into public purchasing, the City intends to reduce impacts to human health and the environment, reduce its carbon footprint, remove unnecessary hazards from its operations, reduce costs and liabilities, fulfill its commitments under the City's Green Vision and Urban Environmental Accords, meet LEED requirements for USGBC certification, and improve the environmental quality of the region.

This Policy will guide the City's efforts to procure environmentally sustainable products and services. While not all of these guidelines will be feasible in every procurement of goods and services, the City will make a good faith effort to incorporate these guidelines to the maximum extent possible in its procurement decisions. This Policy could be considered for purchasing and contracting in support of the operation and management of all City-owned buildings and facilities as well as their components, systems, operations and materials; and for all City programs, events, contractors, and grantees.

BACKGROUND

The City adopted Council Policy 4-4 on Source Reduction and Recycling Procurement in 1990 to establish markets for recyclable materials. Policy 4-4 was designed to favor products with recycled content and ensure that such products were not excluded from consideration in solicitations.

In 2001, the City expanded environmental considerations in procurement beyond recycling and the reduction of solid waste and toxics to include energy conservation, water conservation, and

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life cycle analysis with the adoption of Council Policy 4-6, the Environmentally Preferable Procurement Policy (EP3). Policy 4-6 was revised in 2007, ~~and 2009, and 2012.~~

Policies 4-4 and 4-6 enabled the City to seek grants from the California Integrated Waste Management Board, which requires a formal recycled content procurement policy and a report on its implementation for grant eligibility.

In 2005, the City became a signatory to the Urban Environmental Accords which encouraged its members to conduct environmental procurement.

To address sustainability in a more comprehensive way, the City adopted its Green Vision in 2007. The ten Green Vision goals ~~are were~~ designed to move the City towards greater environmental sustainability. Policy 4-6 ~~advances advanced~~ several of the Green Vision goals including zero waste, energy efficiency and renewable energy, green building, green fleet, and smart streets.

In recent years, the State of California has enacted several bills that relate to Policy 4-6 including AB 1879, the Green Chemistry Act, SB 509 addressing hazardous materials and toxic substances, and AB 32, the Global Warming Solutions Act.

City policies and plans that support the goals of environmental preferable procurement include the Sustainable City Major Strategy of the General Plan, the Pollution Prevention Policy, the Green Building Policy, the Zero Waste Strategic Plan (adopted October 2008), the Strategic Energy Plan (adopted September 2009), ~~), and the proposed Climate Action Plan~~ Climate Smart San José (adopted February 2018)¹.

POLICY

It is the policy of the City of San José to reduce the environmental impact of its purchases by addressing:

1. PRODUCT CONTENT

- a. Purchase products which contain the highest percentage of post-consumer recovered material and the highest percentage of total recovered material available in the marketplace (e.g.; minimum 30% post-consumer content for paper).
- b. Ensure that specifications and performance standards for goods and services do not require the use of products made from virgin materials nor specifically exclude the use of environmentally preferable products.
- c. Replace disposables with re-usable, recyclable, or compostable goods.
- d. Avoid hazardous materials that have the potential to be persistent, bioaccumulative and/or toxic (PBT). Consider impacts and threats of harm to human health and/or the environment.
- e. Require manufacturers and their suppliers to disclose to the City the material

¹ Formerly referred to as the proposed Climate Action Plan

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content of their products.

2. EXTENDED PRODUCER RESPONSIBILITY

- a. Include product specifications that address:
 - i. Durability and minimization of waste in the product design, materials content, manufacturing processes, packaging, distribution, and end-of-life management. Areas of consideration include the use of virgin material, water, energy, hazardous substances, product longevity, recycled content, recyclability, and product takeback.
 - ii. Free or low-cost product takeback services (e.g.; collection, recycling, remanufacturing, and proper disposal of their products).
 - iii. Documentation that products previously purchased or leased are in fact reused, recycled, or otherwise safely managed at the end of their useful lives. D
- b. Purchase products that minimize greenhouse gas emissions over the entire product lifecycle.
- c. Participate in industry-financed recycling programs such as the Rechargeable Battery Recycling Corporation (RBRC) and the Thermostat Recycling Corporation (TRC).

3. ENVIRONMENTAL PRODUCT STANDARDS

Procure environmentally preferable goods and services that meet environmental product standards established by governmental or other widely recognized authorities, including Short-lived Climate Pollutants (SLCP): Organic Waste Reduction Regulations. Examples include the Green Seal 37 standard for janitorial products, EPEAT for IT equipment, ~~and~~ GreenGuard for furniture, and SLCP Regulation-eligible compost and mulch. The standards should be:

- a. Developed and awarded by an impartial third-party;
- b. Developed in a public, transparent, and broad stakeholder process; and
- c. Represent specific and meaningful criteria for that product or service category.

4. OTHER ENVIRONMENTAL FACTORS

Integrate environmental factors into the City's purchasing decisions if external authorities have not established standards. Examples include, but are not limited to:

- a. Purchase fleet vehicles that provide the best available fuel efficiency and net reduction in vehicle fleet emissions;
- b. Evaluate, as appropriate, the environmental performance of vendors in providing products and services;
- c. Ensure that at least 30% of direct purchases of food served in City facilities is locally grown and organic; and
- d. Procure goods, products and services that support City LEED certification.

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5. PERFORMANCE MEASUREMENT

Quantify the environmental and economic benefits of the procurement of environmental alternatives such as recycled content paper, biodiesel, and IT equipment by utilizing available product environmental benefits calculators. Environmental benefits calculators have been developed to quantify the benefits associated with the procurement and use of various products such as paper, biodiesel, and janitorial supplies.

DEFINITIONS

The following terms shall have the assigned definitions for all purposes under this Policy:

Environmentally Sustainable Products and Services means products and services that comply with SLCP Regulations or those which have a lesser or reduced negative effect on human health and the environment when compared with competing products that serve the same purpose. In comparing products and services, the City should consider raw materials acquisition, production, manufacturing, packaging, distribution, operation, maintenance, reuse, disposal of products, end of life management, or service delivery.

Specifically, factors that should be considered when determining that a product or service has environmentally preferable attributes include, but are not limited to:

- Minimization of virgin material used in product or service life cycle;
- Maximization of recycled materials used in product or service life cycle;
- Life cycle analysis of products and services;
- Reuse of existing products or materials in product or service life cycle;
- Recyclability, biodegradability, and compostability of product;
- Minimization of packaging;
- Minimization of greenhouse gas emissions;
- Water, energy, and fuel efficiency;
- Toxicity reduction or elimination;
- Durability and maintenance requirements; and
- Ultimate disposal of the product.

LEED (Leadership in Energy and Environmental Design) means the Green Building Rating System developed and administered by the United States Green Building Council (USGBC) and adopted by the City in the Green Building Policy.

Life Cycle Analysis means the comprehensive accounting of the total cost of ownership, including initial costs, energy and operational costs, longevity and efficacy of service, and disposal costs.

Extended Producer Responsibility (EPR) means an environmental policy that transfers the costs and/or physical responsibility of waste management away from local government authorities to producers by encouraging the producer to extend their responsibility for the environmental impact (physical and/or financial) of a product to the post-consumer stage of a product's life cycle, to the extent that the impacts cannot be eliminated by design.

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Persistent, bioaccumulative, or toxic (PBT) means chemicals that are toxic, persist in the environment, bio-accumulate in food chains, and pose risks to human health and ecosystems. PBTs transfer easily between air, water, and land, remain in the environment for long periods of time, are not readily destroyed, and build up or accumulate in body tissue.

Short-lived Climate Pollutants (SLCP) Organic Waste Reduction Regulations (SLCP Regulations) mean regulatory text developed by CalRecycle to implement Senate Bill 1383 of 2016 adding Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets, and regulations developed by CalRecycle.

IMPLEMENTATION GUIDELINES

The City Manager shall ensure the development and maintenance of implementation guidelines that provide sufficient direction and clarity to carry out this Policy in an efficient and accountable manner. Specifically, the City Manager shall:

- ~~1. _____ Prepare and deliver to the City Council an annual report as requested on the implementation of this Policy. The report shall include documentation of the types, quantities, and dollar amounts of environmentally preferable products and, their economic and environmental benefits (including the percentage of post-consumer and total recovered material content). This report should also discuss the environmental benefits of applying this Policy to certain services such as janitorial, landscape, and painting services.~~
- 2.1. _____ Establish guidelines governing the development, review, and approval of specifications for procurement of products and services that address recycled content, recyclability, energy and water conservation, life cycle cost, extended producer responsibility, toxins reduction, rapidly renewable materials, forest protection, preference for local products, and other environmental considerations, and support Green Building certification efforts.
- 3.2. _____ Include environmentally sustainable products and services in specifications for City solicitations.
- 4.3. _____ Incorporate product (including packaging) stewardship measures such as take back and end of life management into contract requirements.
- 5.4. _____ During an evaluative procurement process, require vendors to report environmental and economic benefits of green product alternatives.
- 6.5. _____ Ensure that all new City buildings and renovations utilize materials and building systems that will facilitate LEED certification and ensure that this policy is implemented in a manner consistent with the City's Green Building Policy 8-13.
- 7.6. _____ Review this Policy at least every five years as needed, and present any recommendations to the City Council.

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~~8.7.~~ The City will not purchase polystyrene foam cups, bowls and plates, or any other single- use food service wares that cannot be recycled or composted in the City's programs, unless there are no practicable alternatives. The City Manager shall take actions to implement this Policy in all vendor contracts, grant agreements, and concession agreements; at all City-sponsored events and in permits and leases involving the use of City property, where practicable and appropriate.