
Richard J. Cimperman and Council Members Chipman, Zone, Mitchell, Westbrook, Brady, Pruitt, Brancazio and Puleo.

An ordinance to supplement the Codified Ordinances of Cleveland, Ohio, by adding new Sections 187A.01 to 187A.07 and 187A.99, relating to the Local Producer, Local-Food Purchaser, and Sustainable Business Preference Code.

Whereas, large purchasers of goods and materials such as the City of Cleveland can strengthen the regional economy by procuring a greater portion of their purchases from local businesses; and

Whereas, purchasing local products will reduce the City of Cleveland's carbon footprint by reducing the distance that goods travel from factories and farms to the city, thereby decreasing the amount of harmful emissions; and

Whereas, the Greater Cleveland region has a vibrant manufacturing, industrial, and food production history, continuing to strengthen our local economy by supporting local producers; and

Whereas, purchasing local products and materials will increase the City of Cleveland's self-reliance and resilience, as well as acting as a model for local purchasing policies that support both local and regional businesses, development and economic growth; and

Whereas, encouraging local business relationships and supporting sustainable practices will expedite their participation in high-growth sectors of the economy such as renewable energy, recycling, green building, zero waste and other sustainable businesses, which in turn will encourage more graduates to remain in the Greater Cleveland region and attract new talent to the region now; therefore

Be it ordained by the Council of the City of Cleveland:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 187A.01 to 187A.07 and 187A.99, to read as follows:

CHAPTER 187A
LOCAL PRODUCER, LOCAL-FOOD PURCHASER, AND SUSTAINABLE BUSINESS PREFERENCE CODE

Section 187A.01 Definitions of Terms

As used in this Chapter, the following words, phrases, and terms shall be defined as set forth below:

(a) "Bidder" means a Person of record between a party to a Contract with a Contractor for implementation of a Contract and shall include a Person in privity of contract with the Contractor.

(b) "Bid Discount" means the application of a percentage discount to the total amount of a bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when determining the lowest and best bid, or lowest responsible bid. The use of a Bid Discount for Bid Comparison does not affect the total amount of the bid submitted by a Bidder or the Contract executed based on said bid.

(c) "Business Enterprise" means a firm, sole proprietorship, partnership, association, corporation, company, or other business entity of any kind including, but not limited to, a limited liability corporation, incorporated professional association, joint venture, estate, or trust.

(d) "City" means the City of Cleveland, Ohio.

(e) "Commercially Useful Function" means when a Local Producer or Local-Food Purchaser:

1. Assesses the actual and contractual requirements for furnishing the supplies or materials;

2. Is recognized as a provider of the contracted supplies and materials by the industry involved;

3. Owns or leases a warehouse, yard, or other facilities for storing inventory or otherwise conducts business in a manner which is usual and customary in the industry and market for the supplies or materials; and

4. Distributes, delivers, and services products primarily with its own staff and/or equipment.

(f) "Commissioner" means the Commissioner of Purchases and Supplies or the Commissioner’s designee.

(g) "Contracting Department" means a binding agreement executed on or after the effective date of this Local Producer, Local-Food Purchaser, and Sustainable Business Preference Code, by which the City either grants a privilege or is committed to expend or does expend its funds or other resources, or confers a benefit having money value but not limited to, a grant, loan, interest in real or personal property, or tax incentive in any form for or in connection with a work, project, or public purpose including, but not limited to, a contract for:

1. Construction of any public improvement, including change orders or subsidiary agreements approved by the City during the performance of such Construction;

2. Purchase of personal property;

3. Purchase of any supplies, equipment or services; or

4. Lease of any personal property.

(h) "Contract" shall include a binding agreement entered into by the City, between a party to a Contract and a third party, but shall exclude contracts with other public entities, except as provided in Section 187.09.

(i) "Contracting Department" includes any administrative department under charge of the Mayor or any office, board, or commission treated or construed as a department of City government for any purpose under the Charter or ordinances of the City for the benefit or program of which the City enters into a particular Contract.

(j) "Contractor" means a separate or distinguishable Business Enterprise employing one or more persons or having executive and managerial functions and duties in the Local Contracting Market.

(k) "Contract" shall include a binding agreement entered into by the City, between a party to a Contract and a third party, but shall exclude contracts with other public entities, except as provided in Section 187.09.

(l) "Contracting Department" includes any administrative department under charge of the Mayor or any office, board, or commission treated or construed as a department of City government for any purpose under the Charter or ordinances of the City for the benefit or program of which the City enters into a particular Contract.

(m) "Local Food" means and includes food that is grown, extracted, produced, reared, bred, or otherwise obtained within the Local Contracting Market.


(o) "Local Producer" means a Person that:

1. Has its principal office (headquarters) located physically in the Local Contracting Market and whose highest executive officers and highest level managers maintain their offices and perform their respective executive and managerial functions and duties in the Local Contracting Market; and

2. A. grows food or fabricates goods, whether or not finished, from organic or raw materials; B. processes goods or services primarily with its own staff and/or equipment; C. supplies goods by performing a Commercially Useful Function; or D. provides, by its qualified full-time employees, maintenance, repair, personal, or professional services.

(p) "Local Sustainable Business" means a Business Enterprise that:

1. Has its principal office (headquarters) located physically in the Local Contracting Market and whose highest executive officers and highest level managers maintain their offices and perform their respective executive and managerial functions and duties in the Local Contracting Market; and

2. Has established sustainability goals for itself and is a member of or signatory to a nationally-recognized sustainability program, which program has been determined acceptable by the City Chief of Sustainability or other officer designated by the Mayor.

(q) "OEO Director" means the Director of the Office of Equal Opportunity of the City.
(s) "Person" means and includes a natural person, a Business Enterprise, or any other entity, unless the context or usage requires otherwise.

Section 187A.02 Preference for Local Producers, Local-Food Purchasers, and Local Sustainable Businesses

(a) Application of Bid Discount — A Contracting Department shall apply a Bid Discount of two percent (2%) to a bid received from a Local Producer; two percent (2%) to a bid received from a Local Sustainable Business; and two percent (2%) to a bid received from a Local-Food Purchaser; provided that the maximum total Bid Discount applied under this division (a) shall not exceed four percent (4%). Bid Discounts applied under this division (a) shall be in addition to any Bid Discount applied under Sections 187.03 and 187.05. The maximum amount of any Bid Discounts applied to a bid under this division (a) shall not exceed $50,000.00, provided, however, that the maximum cumulative amount of all Bid Discounts applied to the bid under this division (a) and under Sections 187.03 and 187.05 shall not exceed $75,000.00.

(b) Application of Evaluation Credit — A Contracting Department shall apply an Evaluation Credit of two percent (2%) of the total points awarded for a proposal received from a Local Producer, two percent (2%) of the total points awarded for a proposal received from a Local Sustainable Business, and two percent (2%) of the total points awarded for a proposal received from a Local-Food Purchaser; provided that the maximum total Evaluation Credit applied under this division (b) shall not exceed four percent (4%).

Section 187A.03 Duties of Director of Office of Equal Opportunity; Compliance Monitoring

In addition to those duties specified in Section 123.08 and Section 187A.04, the Director of Law deems appropriate; (1) Reviewing all submittals and other information required or necessary under this Code to determine whether a particular Person qualifies for certification or approval as a Local Producer or a Local-Food Purchaser or a Local Sustainable Business and is in compliance with this Code;

(2) Notifying an affected Contracting Department that the certificate or approval pertaining to a particular Person is or is not currently effective with respect to the matters for which the same were issued;

(3) Initiating and receiving complaints of non-compliance with this Code; the Contracting Department shall notify the Director of Law deems appropriate; (a) Investigating complaints pertaining to non-compliance with this Code and recommending appropriate sanctions;

(b) The OEO Director shall monitor a Contractor’s compliance with its bid representations of its qualification(s) as a Local Producer or Local-Food Purchaser or Local Sustainable Business; or the performance of a Contract it was awarded because of applying a Bid Discount or Evaluation Credit under Section 187A.02. If the OEO Director determines that there is cause to believe that a Contractor failed to qualify as a Local Producer or Local-Food Purchaser or Local Sustainable Business as represented in its bid or proposal, the OEO Director shall notify the Contractor of the apparent breach of or default under the contract. The OEO Director may require a Contractor or Bidder to submit such reports, information and documentation as reasonably necessary to determine its status as a Local Producer or Local-Food Purchaser or Local Sustainable Business in the performance of its Contract.

(c) The OEO Director shall maintain complete and accurate records of the use of Local Producer’s or Local-Food Purchaser’s or Local Sustainable Businesses’ goods, materials, supplies, services in performance of the Contracting Department’s Contracts, including the dollar value of orders supplied from such Local Producers, Local-Food Purchasers or Local Sustainable Businesses; the nature of the goods, materials, supplies, or services provided, and the name and address and the qualifications of each Local Producer or Local-Food Purchaser or Local Sustainable Business as such.

Section 187A.04 Sanctions for Non-compliance

If the OEO Director determines that a Contractor is in breach or default with respect to any representation regarding its status as a Local Producer or Local-Food Purchaser or Local Sustainable Business when the Contractor would not have been the lowest bidder or recommended to a Contracting Department’s Contracts, including the dollar value of orders supplied from such Local Producers, Local-Food Purchasers or Local Sustainable Businesses; the nature of the goods, materials, supplies, or services provided, and the name and address and the qualifications of each Local Producer or Local-Food Purchaser or Local Sustainable Business as such.

Section 187A.05 Responsibilities of Commissioner and Contracting Departments

The Commissioner and each Contracting Department shall:

(a) Enforce to maximize the purchase of Local Producers, Local-Food Purchasers, and Local Sustainable Businesses’ goods, materials, supplies, or services in Contracts of $10,000 or less; and

(b) Develop with Local Producers, Local-Food Purchasers, and Local Sustainable Businesses for whose goods, materials, supplies, or services the City regularly contracts for a performance bond.

Section 187A.06 Contracts with Other Governmental Entities as Contractors

Contracts or other agreements between the City and any other political subdivisions, governmental, or quasi-governmental agencies, under which those entities receive money from or contract with the City for the purpose of providing services to the City or for the purpose of contracting with Business Enterprises to perform projects in the City, shall ensure that Business Enterprises comply with the provisions of this Chapter in awarding, administering, and implementing the contracts.

Section 187A.07 Reports; Consideration of Scope

(a) As part of the annual report submitted under Section 123.08, the OEO Director shall summarize the utilization of this chapter in the award of City contracts during the preceding year.

(b) The Council shall reconsider the scope of this chapter, including the size of the Local Contracting Market, five years after the effective date of this section.

Section 187A.09 Violations; Penalties

(a) No Person shall wilfully falsify, conceal or cover up by a trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representations or make use of any false writing or document knowing the same to be false, fictitious, or fraudulent statement or entry in any matter established under this Chapter.

(b) No Person shall fraudulently obtain, attempt to obtain, or aid another Person fraudulently obtaining or attempting to obtain a Local Producer’s or Local-Food Purchaser’s or Local Sustainable Business Bid Discount or Evaluation Credit.

(c) Any Person who violates the provisions of this section is guilty of a misdemeanor of the first degree.

(d) In addition to other remedies available with respect to violations of divisions (a) and (b) of this section, the OEO Director may recommend to a Contracting Department Director, and a Contracting Department Director may:

(1) Recommend to the Director of Law that the City take such legal action, whether civil or criminal, as the Director of Law deems appropriate;

(2) Disqualify a Bidder, Contractor, or other Business Enterprise from eligibility as Contractor, sub-contractor, or Local Producer or Local-Food Purchaser or Local Sustainable Business for providing goods, materials, supplies, or services to the City for a period not to exceed two (2) years; or

(3) Make a claim for payment of damages, including but not limited to any liquidated damages specified in the Contract.

Section 2. That Sections 187A.01 to 187A.07 and 187A.08 of the Codified Ordinances of Cleveland, Ohio, 1976, shall take effect and be in force sixty (60) days after passage of this ordinance.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed March 29, 2010.

Effective April 28, 2010.