



THE SUSTANY
FOUNDATION

To: Robert Sanchez, Sustany Foundation

From: Jessica Calley

Date: March 6, 2010

Re: Green Business Preference

Issue

Whether the City of Tampa can create advantages for businesses that are recognized as green businesses through the use of tax exemptions, bidding preferences, or contract advantages.

David Reed,
President

Andrea Cheney
Vice Director

Robert Sanchez
Secretary / Treasurer

Brian Curry,
Executive Director

Discussion

It is clear that in order to further promote the growth of the green business movement in the Bay area, the City of Tampa will need to create tangible incentives for recognition as a green business. The types of advantages available to the City range from tax credits to biobased and environmentally preferable purchasing programs. Examples of these types of programs are available from federal, state, and local governments. Further proof of the power of Tampa to create incentives is demonstrated by similar business preference programs developed by city municipalities across the country.

It can be concluded that the City of Tampa would likely be able to create an incentives program for businesses which are recognized as being green.

I. Green Business Advantages

A. United States Government

The United States Government offers a variety of preferences and advantages to green businesses and businesses that sell environmentally sustainable products. These programs range from tax credits to environmentally sustainable procurement programs, and are promoted by the Environmental Protection Agency, United States Department of Energy, and the United States Department of Agriculture. Through these programs, the U.S. Government provides tangible benefits to business that 'do good' for the environment and the health and welfare of the citizens of the United States.

One benefit offered by the Federal Government is tax credits for energy efficiency. The U.S. Government offers credits for energy efficiency to home builders, manufactures, and commercial buildings.¹ Additionally, the Government provides special offers and rebates for the purchase of energy efficient appliances.²

Another form of green business preference, the Executive Office has promulgated orders which support the purchase of environmentally sustainable products. One such

¹United States Government, *Green Business Guide*, <http://www.business.gov/expand/green-business/grants-and-loans/> (last modified Feb. 25, 2010).

² *Id.*

order promotes the purchase of goods and services which employ the use of sustainable environmental practices, including the acquisition of biobased environmentally preferable, energy efficient, water efficient, and recycled products, and the use of paper that is made of at least 30 percent recycled content.³ One way of implementing the Executive Orders is the USDA's Designation of Biobased Items for Federal Procurement.⁴ This regulation led to a guideline promulgation created by the EPA which suggests products containing recovered materials.⁵ Procuring agencies use the guideline to purchase products that are or can be made with recycled materials.⁶

The USDA has also created programs to promote biobased purchases. One example is the USDA's Biopreferred program which "aims to increase the purchase and use of renewable, environmentally friendly biobased products while providing 'green jobs and new markets for farmers, manufacturers, and vendors.'"⁷ Under USDA's procurement program, the biopreferred designation identifies items, or generic groupings of biobased products, that are required for purchase by Federal agencies and their contractors. Also from the USDA is the Green Purchasing program. This program is meant to "promote the purchase of recycled content products, biobased products, Energy Star and energy-efficient products, and environmentally preferable products and services in accord with

³ Federal Facilities Environmental Stewardship and Compliance Assistance Center, *Acquisition (formerly Green Buying)*, <http://www.fedcenter.gov/programs/buygreen/> (last modified Mar. 3, 2010).

⁴ 7 C.F.R. 2902 (2005).

⁵ Environmental Protection Agency, *Comprehensive Procurement Guidelines*, <http://www.epa.gov/epawaste/consERVE/tools/cpg/> (last modified Jan. 21, 2009).

⁶ *Id.*

⁷ United States Department of Agriculture, *BioPreferred*, <http://www.biopreferred.gov/?SMSESSION=NO> (last accessed Feb. 11, 2010). See also, 72 Fed. Reg. 63040 (Nov. 7, 2007).

Executive Order 13101 and other legislative and executive order requirements."⁸ The program was "developed to ensure that green products are purchased to the maximum extent practicable."⁹

The programs created by the Federal Government create incentives for businesses to be green through the use of tax exemptions, and also to sell green products and services through procurement programs. These programs are incentives for green businesses because they, in effect, guarantee the purchase of environmentally sustainable goods and services over other, non biobased, products.

B. State and City Governments

Beyond the Federal Government, there are many state and city governments that have created incentives for green businesses. Many of these programs are similar to the environmentally preferable purchasing programs created by the agencies of the Federal Government. Other state and city government incentives include clean energy incentive programs, green building programs, and energy conservation programs. All of these programs create tangible advantages for green businesses.

1. California and other state governments

⁸ United States Department of Agriculture, *Green Purchasing*, <http://www.da.usda.gov/energyandenvironment/greenpurchasing/index.html> (last modified Apr. 22, 2008).

⁹ United States Department of Agriculture, *Green Purchasing Affirmative Procurement Program*, <http://www.da.usda.gov/energyandenvironment/greenpurchasing/gpapp08.pdf> (last modified Apr. 18, 2008). The Green Purchasing program "fulfills the affirmative procurement requirements of section 6002 of the Resource Conservation and Recovery Act, Section 10 of the Energy Policy Act of 2005, Section 9002 of the Farm Security and Rural Investment Act of 2002, § 612 of the Clean Air Act of 1990, Executive Order 13423, Council on Environmental Quality implementing instructions, and Executive Order 13221." *Id.*

One example of a state with green business incentives is California, which has an environmentally preferable purchasing program similar to that of the U.S. Government. By statute, California requires that, where practicable, state agencies purchase environmentally preferable products.¹⁰ Other states with similar programs include Illinois, New Jersey, and Vermont.¹¹

2. Cleveland

In March, 2010, Cleveland passed a new ordinance which gives preference to local and green business.¹² The ordinance was approved in an effort to promote sustainability in the Cleveland area and to give the Mayor another tool to help foster a green regional economy.¹³ Under the new ordinance, businesses are given a 2 percent bid discount for being located within a 5 county wide area around Cleveland.¹⁴ Another discount of 2 percent is given to any company that has been certified as a business that uses sustainable business practices.¹⁵ An additional 2 percent discount is awarded for food contracts if the company produces food locally or purchases at least 20 percent of the food it sells locally.¹⁶ The greatest discount given to any one business for a contract is 4 percent, this

¹⁰ Cal. Pub. Contract Code §§ 12400-12404 (West 2004).

¹¹ Sustainable Business Network, *Sustainable Procurement for Philadelphia*, <http://www.sbnphiladelphia.org/events/Sustainable%20Procurement%20Overview%20August%202008.pdf> (last modified Aug. 2008).

¹² Mark Gillispie, *New Cleveland ordinance aims at helping local companies with business with the city*, http://www.cleveland.com/cityhall/index.ssf/2010/03/new_cleveland_ordinance_aims_a.html (Mar. 30, 2010). Codified ordinances for the City of Cleveland are only updated through June 30, 2009. *Cleveland City Council, Cleveland Ordinances*, <http://www.clevelandcitycouncil.org/Home/CodifiedOrdinances/tabid/66/Default.aspx> (last accessed May 12, 2010).

¹³ Gillispie *supra* n. 12.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

applies to both contracts for goods and services.¹⁷ Businesses owned by minorities or females, or certified as a small business may receive up to a 5 percent discount, in addition to the 4 percent discount under the new ordinance.¹⁸ The Mayor's chief of staff stated that "[o]ver the long run, the impact of keeping that business within the region will, in [the City Council's] judgment, more than offset [the]cost."¹⁹

3. San Francisco

San Francisco has a variety of environmental policies which create incentives for green businesses. The first of the programs created by San Francisco's environmental policies is an environmentally preferable purchasing program²⁰ similar to both that of the U.S. Government and California. Particular to San Francisco, the environmental policy explains that San Francisco is exercising its power to make economic decisions involving its own funds and as a participant in the market place, and to conduct its own business as a municipal corporation to ensure purchases which are consistent with San Francisco's policies.²¹ The goal of the program is to promote human health.²² San Francisco provides an Approved Alternatives List which is a comprehensive set of substantial and qualitative human health and environmental criteria.²³

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ San Francisco Env'tl. Code (Cal.) § 2 (2004).

²¹ *Id.* at § 2-200.

²² *Id.*

²³ *Id.* at § 2-203(c)

Other programs in San Francisco include a green building program which requires all new municipal facilities to achieve LEED silver certification and all new construction within the city limits to meet the standards of a credible green building standards program.²⁴ This type of program creates jobs for existing green construction businesses. Finally, San Francisco has a solar energy incentives program which includes benefits for businesses engaging in a clean energy technology business.²⁵ This means the "development, manufacture, or application of scientific advances that produce or contribute to the production of clean energy utilizing"²⁶ a variety of recognized green energy processes. A clean energy business is defined as a "business in which at least 75 percent of all business activities that are carried on during the tax year are directly related to clean energy technology."²⁷

4. Denver

The city government of Denver has also promulgated policies which create incentives for green businesses. Through Denver's Energy Star and Green Purchasing program, Denver's Purchasing Division encourages all city departments to purchase Energy Star rated equipment, and to give preference to recycled and recyclable products in all purchases.²⁸ Additionally, Denver has a Green Building and Energy Conservation program which, "in order to mitigate the negative environmental impacts of the building

²⁴ San Francisco Env'tl. Code § 13(c) (2005).

²⁵ San Francisco Env'tl. Code § 18 (2005).

²⁶ *Id.*

²⁷ *Id.*

²⁸ John W. Hickenlooper, *Executive Order No. 123*, <http://www.greenprintdenver.org/docs/CCDXO123.pdf> (last modified Oct. 24, 2007).

environment, requires all buildings being constructed with city funds to be designed, constructed, operated, and maintained according to LEED standards and best management practices for sustainability."²⁹ This program has effects similar to the green building program created in San Francisco.

5. Other city governments

Other cities have also created ordinances and policies which provide benefits and incentives for green businesses and businesses which provide green products. In 2008, the Green Economy Policy Committee recommended that Philadelphia create a green procurement program.³⁰ According to the Committee's report, other city governments with similar programs include Boston, Cincinnati, New York City, Portland, San Diego, and Seattle.³¹ Green procurement programs seem to be growing in popularity and are an effective way of providing advantages for businesses providing green products and services through the decrease in competition which would otherwise occur with non green businesses.

II. Other Forms of Preferences By City Governments

Comparisons can be made to other forms of business preference by city governments to answer the questions whether a city government can prefer a green business over other businesses when bidding for government contracts. Most similar to the issue of green businesses is local business preference. Due to the recent economic

²⁹ *Id.*

³⁰ Sustainable Business Network, *supra* n. 11.

³¹ *Id.*

crisis, many city and state governments have been showing preference toward local businesses in order to stimulate local economies. Examples of cities with these preference programs include Chattanooga, Tennessee; Detroit, Michigan; and Sarasota, Florida. In Chattanooga, the city council recently voted to give preference to any business that uses local workers and local resources within a 75 mile radius of the city.³² Similarly in Detroit, the city government has approved a policy to give contract preference to Detroit-based businesses.³³ In March, 2009, Sarasota created a new ordinance which gave preference to local bidders because of the benefits to Sarasota's economy and because it was determined to be good for the public health and welfare.³⁴

These types of programs are similar to green business preference in that both are examples of a city or state government exercising its power as a market participant. Beyond being somewhat environmentally conscious by themselves, local business preferences are an example of cities choosing to spend their money in a way that is beneficial to the municipalities which they serve. In comparing the two types of programs, green business preference programs could be achievable if clearly outlined in a city ordinance or policy, and if the purpose of the program were to benefit the environmental sustainability of the community and to promote public health and welfare.

III. Conclusions

³² Cliff Hightower, *Chattanooga: City Council approves local preference ordinance*, <http://www.timesfreepress.com/news/2010/feb/09/chattanooga-city-council-voting-local-preference-o/> (last modified Feb. 9, 2010).

³³ Nancy Kaffer, *Hot-button ordinances may go up for review: Privatization, Detroit preference questioned*, <http://www.crainsdetroit.com/article/20100119/EMAIL01/301199996#> (last modified Jan. 19, 2010).

³⁴ Sarasota Mun. Code § 09-4849 (2009).

It is likely that the City of Tampa would be able to create advantages for businesses which are recognized as green businesses. Types of programs can include tax credits, purchasing programs, bidding preferences, and energy conservation and green building programs. By drawing comparisons to the recent trend of local business preferences, the City of Tampa can likely further support the use of incentives for green businesses. As a market participant and government power free to make its own economic decisions, the City of Tampa likely would have the ability to prefer to conduct business with environmentally sustainable, green businesses.