



**CITY OF LONG BEACH**  
DEPARTMENT OF FINANCIAL MANAGEMENT

**ORD-18**

333 WEST OCEAN BOULEVARD - LONG BEACH, CALIFORNIA 90802

April 6, 2004

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

SUBJECT: City of Long Beach Local Preference Program (Citywide)

DISCUSSION

On November 5, 2002, Long Beach voters passed Ballot Measure U that changed Charter Section 1803 to address the City's local preference as it is applied to the issuance of City contracts. The change now enables the City Council to set the nature and amount of the local preference by ordinance.

The Purchasing Division of the Department of Financial Management administers the local preference program. In general, a local preference is applied when a bid for materials, equipment, supplies or non-professional services is opened. The bid analysis, assuming all other factors are considered equal, incorporates the local preference for the lowest responsible bidder who maintains a business located within the city.

The attached report, submitted by memorandum to the City Council on May 1, 2003, provides a detailed review of the former procedures, a survey of local preferences for other California cities, the economic impacts of implementing a local preference, and a legal review of applicability and issues to consider in implementing a local preference program. The Long Beach Chamber of Commerce, Long Beach Black Chamber of Commerce and Economic Development Commission supported the recommendations identified in the report.

City staff and Chamber of Commerce representatives met in March 2004 to review the recommendations made to the City Council and have agreed to certain modifications to the program. The modifications take into consideration the economic challenges the City is currently facing while still recognizing the need to continue to support Long Beach businesses. As a result, staff recommends the following guidelines in establishing a Local Preference Program:

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- Establish a 2 percent preference at implementation date applicable to all purchases of materials, equipment, supplies and non-professional services and increase it by one percentage each year until it reaches 5 percent in 2007.
- Establish a contract ceiling of \$100,000 on the purchase amount upon which the preference is applied. This ceiling supports the City Attorney's recommendation to minimize any "substantial" impact or effect on the market for any goods or services. It also enables City staff to monitor the financial impacts and make adjustments and recommendations after each year of applicability.
- Establish a policy that requires all businesses located within the city boundaries to file a Seller's Permit (Sales Tax permit) with their Long Beach address in order to qualify for the local preference.
- Review the applicability of the local preference to construction projects in relation to the "Green Book" standards for Public Works construction currently used by the City. These are strict rules on the methods of awarding contracts to the lowest responsible construction bidder. Upon a review and development of procedures, recommendations will be brought to the City Council by the first year's annual review of the local preference program.
- Do not apply the local preference to Technology and Library purchases due to these purchases being governed by Charter Sections 1801 and 1807.
- As advised by the City Attorney and included in the ballot language, do not apply the local preference to purchases funded by Tidelands funds, Grant funds, and State of California revenues.
- Establish an annual review process on the applicability and impact of the local preference that enables the City Council to review and make adjustments to the program as necessary.
- Request the City Attorney to prepare the required ordinance to make the findings necessary to implement a local preference program.
- Require that City departments support the above provisions and support the City's "Buy Long Beach" campaign as part of its Diversity Outreach Program.

To ensure public input on the above recommendations is thoroughly obtained, staff recommends that this matter be referred to the Economic Development and Finance Committee for further review and discussion.

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This matter was reviewed by Deputy City Attorney Donna F. Gwin on March 15, 2004 and by Budget Manager Michael Killebrew on March 18, 2004.

TIMING CONSIDERATIONS

City Council action on this item is not time critical.


FISCAL IMPACT

Based on FY 03 purchases, it is estimated that applying a 2 percent up to a 5 percent preference to all purchases for equipment materials, supplies and non-professional services with a contract ceiling of \$100,000 could result in additional costs to the City ranging from \$14,042 to \$70,209 annually.

IT IS RECOMMENDED THAT THE CITY COUNCIL:

Refer this item to the Economic Development and Finance Committee for review and recommendations to the City Council.

Respectfully submitted,



ROBERT S. TORREZ  
DIRECTOR OF FINANCIAL MANAGEMENT

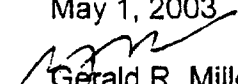

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Attachment

APPROVED:

  
GERALD R. MILLER  
CITY MANAGER



**Date:** May 1, 2003  
**To:**  Gerald R. Miller, Acting City Manager  
**From:**  Bob Torrez, CFO/Director of Financial Management  
**For:** Mayor and Members of the City Council  
**Subject:** Report on the Preference to Businesses Located in Long Beach

On November 5, 2002, Long Beach voters passed Ballot Measure U that changed Charter Section 1803 which addresses the City's local preference. The change now enables the City Council to set the nature and amount of the local preference by ordinance.

The attached report, updated since the November 5, 2002 election, provides the following recommendations:

- Establish a policy that enables the City to encourage businesses located in the Long Beach City limits to file a Seller's Permit (Sales Tax permit) with their Long Beach address.
- Only apply the local preference to those businesses that do have a Seller's Permit on file with the City.
- As supported by the City's Municipal Code, ensure that businesses doing business with the City obtain a Long Beach Business License before obtaining a City contract.
- Establish an annual review process on the applicability and impact of the local preference that enables the City Council to review and make adjustments as necessary.
- Establish a five percent local preference (from one percent) and apply it to all materials, equipment, supplies and non-professional services.
- Do not apply the local preference to Technology and Library purchases due to these purchases being governed by Charter Sections 1801 and 1807.
- Establish a contract ceiling of \$100,000 on the purchase amount upon which the five percent preference is applied. This supports the City Attorney's

recommendation to minimize any "substantial" impact or effect on the market for any goods or services. It also enables City staff to monitor the financial impact to the City and make adjustments and recommendations after one year of applying the five percent preference.

- Do not apply the local preference to construction projects until the Job Order Contracting Program is fully implemented. This program is being implemented by the Department of Public Works and is intended to enhance the City's ability to meet facility maintenance and capital improvement needs. It is a comprehensive procurement system for obtaining construction services.
- As advised by the City Attorney and included in the ballot language, do not apply the local preference to purchases funded by Tidelands funds, Grant funds, and State of California revenues.
- Request the City Attorney to prepare the required ordinance to make the findings necessary to implement a local preference program.
- Require that City departments support the above provisions and support the City's Buy Long Beach campaigns as part of its Diversity Outreach Program.

This report will appear in the near future on a City Council agenda with a recommendation to refer it to the Economic Development and Finance Committee for further review and discussion.

GRM:BT:dcg

Attachment

cc: Christine F. Shippey, Deputy City Manager  
Reginald I. Harrison, Deputy City Manager  
Suzanne R. Mason, Acting Deputy City Manager

# City of Long Beach

## Report on the Preference to Businesses Located in Long Beach



April 30, 2003

Department of Financial Management  
Robert Torrez, Director  
333 W. Ocean Blvd., 6<sup>th</sup> floor  
Long Beach, CA 90802

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## INTRODUCTION

### Local Preference Background

The City Charter Section 1803 is a voter-approved provision giving preference to a business located within the City. Before the November 5, 2002 election, Section 1803 in its entirety read as follows:

#### Sec. 1803. PREFERENCE TO BUSINESSES LOCATED IN THE CITY.

In determining the lowest responsible bidder for furnishing materials, equipment or supplies pursuant to a notice inviting bids, the City Manager shall award the contract to the lowest responsible bidder maintaining a place of business within the City limits if such bid is not more than one percent in excess of the bid filed by the lowest responsible bidder who does not maintain a place of business within the City limits.

If the award made is based upon the one percent preference, the contract shall specify that the same was entered into with a bidder maintaining a place of business within the City limits of Long Beach.

This section shall not be applicable unless payment is made solely from funds and revenues of the City, exclusive of funds and revenues derived from tidelands.

Section 1803 provides a preference to a business located within the City that competitively bids for furnishing materials, equipment or supplies. The responsible bid from a Long Beach business must not exceed, by one percent, the bid filed by the lowest responsible bidder who does not maintain a place of business within the City.

In essence, the local preference permits the City to discount a Long Beach business' bid by the one percent share of the sales tax on purchases of materials, equipment or supplies for which bids are submitted.

### Old Procedures (No program currently in place)

The Purchasing Division of the Department of Financial Management manages most competitive bids over \$10,000 (i.e., issues invitations to bid) and administers the local preference program. When the local preference program is in place and a bid for materials, equipment or supplies is opened, and all other factors are considered equal, the bid analysis factors in the local preference for the lowest responsible bidder who maintains a business located within the City.



If a one percent preference reduces the bid lower than the bid offered by the bidder who is not located within the City, then the award is made to the Long Beach bidder. The following analysis is provided as an example.

<b>ONE PERCENT PREFERENCE EXAMPLE</b>		
	<b>LONG BEACH BIDDER</b>	<b>OUTSIDE BIDDER</b>
<b>Equipment A (City Cost)</b>	<b>\$ 100,000</b>	<b>\$ 99,500</b>
<b>1% Preference</b>	<b>\$ (1,000)</b>	<b>\$ -</b>
<b>TOTAL EFFECTIVE BID</b>	<b>\$ 99,000</b>	<b>\$ 99,500</b>

In the above example, with all other factors being equal, the award would be made to the Long Beach bidder. Other bid analysis factors can include the bidder's references, equipment compliance to specifications, facility requirements, operation schedules and capacity, and delivery time. The bid's completeness, clarity, accuracy, and compliance with the City's bid requirements are also reviewed.

It must be noted that in the above example, the City would pay an additional cost of \$500 when selecting the Long Beach bidder. When the preference is applied, the up-front cost of the equipment would be \$100,000 instead of \$99,500.

Due to the nature of the competitive bid process, the one percent preference rarely makes a difference in the award. Most bids for materials, equipment or supplies have a margin larger than one percent; thereby a one percent preference has not been a deciding factor.

## **OTHER CALIFORNIA CITIES WITH LOCAL PREFERENCE**

### Summary of Survey Findings

A recent survey of the League of California Cities concluded that other California cities also have a local preference in place. The survey showed that most cities have a one percent preference while some cities have implemented a higher percentage.

Cities with a greater than one percent preference include the Cities of Berkeley, Los Angeles, Oakland, Pasadena, San Francisco and West Hollywood. These preferences were established with either a resolution or an ordinance.

Some of the agencies with the higher local preference, such as the City of Berkeley, Los Angeles County and the City of Los Angeles, have imposed a contract ceiling on the purchase amount. The City of Berkeley has a \$25,000 ceiling (i.e., the preference can only be applied to contracts amounting to \$25,000 or less), the County of Los Angeles

has a \$1,000,000 ceiling and the City of Los Angeles has established a \$100,000 ceiling.

The City of Los Angeles, which has a 10 percent local preference, includes businesses located in the County of Los Angeles, not just the city limits. The City of Los Angeles also limits its local preference to small businesses with annual receipts of less than \$3 million.

The State of California also has established a 5 percent bid preference on applicable state contracts. The State's preference applies to businesses that have been certified by the state as a small business in California. To be eligible as a small business in the State, the business:

- Must be independently owned and operated;
- Cannot be dominant in its field of operation;
- Must have its principal office located in California;
- Must have its owners (or officers in the case of a corporation) domiciled in California; and
- Together with its affiliates, be either:
  - A business with 100 or fewer employees, and have average annual gross receipts of \$10 million or less over the previous three tax years, or
  - A manufacturer with 100 or fewer employees.

A complete summary of the survey is included in Appendix 1.

## ECONOMIC IMPACTS

### Sales Tax Connection

In the example below, if the City purchases a piece of equipment for \$100,000 using the one percent preference, the City will pay the purchase cost and the sales tax. As noted in the previous example, the City will pay an additional \$500 more for the equipment than if the purchase was made from the non-local supplier. However, in theory and in practice there is a return of the one percent through the sales tax connection.

<b>ONE PERCENT PREFERENCE SALES TAX EXAMPLE</b>		
	<b>LONG BEACH BIDDER</b>	<b>OUTSIDE BIDDER</b>
Equipment A	\$ 100,000	\$ 99,500
Sales Tax	\$ 8,250	\$ 8,209
<b>Subtotal City Cost</b>	<b>\$ 108,250</b>	<b>\$ 107,709</b>
1% Sales Tax Return	(1,000)	0
<b>TOTAL OF ACTUAL COST</b>	<b>\$ 107,250</b>	<b>\$ 107,709</b>

The example above shows how the one percent sales tax return is applied. When the City of Long Beach makes a purchase from a Long Beach business that has a Seller's (Sales Tax) Permit with a Long Beach address, the City receives one percent of the sales tax collected. The State Board of Equalization (SBE) clearly identified these transactions as occurring in the City enabling the City to collect the full one percent of the sales tax.

A purchase made from a supplier who does not have a Long Beach address results in the City of Long Beach collecting no sales tax from the transaction. The non-local supplier's city of business becomes the collector of the one percent sales tax.

When the SBE is unable to identify the point of sale from sales tax revenues received, the money goes into the State and County pools. The City's share of total point of sale allocation determines the distribution of revenue, which is substantially less than one percent.

Real Cost Example

When the City applies a local preference, the additional cost of purchasing the materials, equipment, or supplies occurs the moment of payment. The one percent sales tax return provides one-for-one revenue offset for the additional purchase cost in the one percent local preference. The additional purchase cost would not be fully offset for a five percent local preference.

Although the local bidder's chances of being awarded the contract increase when the local preference is increased to five percent, the cost of the equipment offered is higher. In the example below, the City will pay an additional \$4,000 for the equipment than if the purchase was made from the non-local supplier because the local preference results in the Long Beach Bidder being awarded the contract.

FIVE PERCENT PREFERENCE EXAMPLE		
	LONG BEACH BIDDER	OUTSIDE BIDDER
Equipment A (City Cost)	\$ 100,000	\$ 96,000
5% Preference	\$ (5,000)	\$ -
<b>TOTAL EFFECTIVE BID</b>	<b>\$ 95,000</b>	<b>\$ 96,000</b>

Even when the sales tax return is applied, the City will still pay an additional \$3,330 more than if the purchase was made from a non-local supplier.

<b>FIVE PERCENT PREFERENCE SALES TAX EXAMPLE</b>		
	<b>LONG BEACH BIDDER</b>	<b>OUTSIDE BIDDER</b>
Equipment A	\$ 100,000	\$ 96,000
Sales Tax	\$ 8,250	\$ 7,920
<b>Subtotal</b>	<b>\$ 108,250</b>	<b>\$ 103,920</b>
1% Sales Tax Return	(1,000)	0
<b>TOTAL EFFECTIVE BID</b>	<b>\$ 107,250</b>	<b>\$ 103,920</b>
<b>ADDITIONAL COST</b>	<b>\$</b>	<b>3,330</b>

While the sales tax return does not completely offset the increased preference, there are economic development factors to consider. In addition, the adage "It makes good sense to buy Long Beach" has its basis in economic theory.

#### Public Goods and the Multiplier Theory

The City of Long Beach purchases over \$569 million in goods and services every fiscal year. Of these purchases, approximately \$143 million are from Long Beach suppliers. City purchases support the efforts to provide police and fire services, ensure that parks and libraries are maintained and open, and provides the materials, equipment and supplies necessary for City employees to provide these and other services. All residents of the City receive these "public goods."

The City's current Diversity Outreach Program, as part of its Buy Long Beach campaign encourages and promotes local purchasing and encourages local suppliers to compete for City contracts. The local economy benefits when the City purchases goods and services from local businesses. The Multiplier Theory, refined by MIT Professor Paul Samuelson, is a central pillar of Keynesian macroeconomics and provides the fiscal policy rationale to support the City's Buy Long Beach campaign.

A general example of the Multiplier Theory is a City purchase of a \$100 item or service. When the purchase is made, it creates a new income for the local supplier. The local supplier, with a propensity to spend 75 percent of earnings, spends \$75 on a new item or service from a second supplier. The second supplier then spends 75 percent of his new income or \$56.25 on something else from a third supplier. A third supplier then adds \$42.19 and so on. Using a simple multiplier of three, a total of \$173.44 can be added to the stream of income and expenditure for the local economy.

Because the Multiplier Theory is an economic theory, there is no measurable return on investment if the City were to increase its local preference and "discount" purchases. Therefore, the typical private sector cost-benefit analysis that focuses on profitability cannot be applied here. What does apply is a social cost-benefit analysis that focuses on enhancing the social and economic benefits through indirect revenues.

In theory, a dollar spent in Long Beach can be recycled three times in the City thereby stimulating and supporting the local economy. Current City policy and the City's Buy Long Beach campaign support this theory.

### Real Cost Estimates

Two approaches were taken to develop a cost estimate of City expenditures based on the impact of an increased local preference. The approaches consider that a local preference will be applied to purchases of materials, equipment, supplies and non-professional services. These approaches provide a basis from which to consider the financial impact of applying a local preference.

The first approach considers the total of all Citywide purchases for materials, equipment, supplies and non-professional services (approximately \$89,256,304), divides that amount by the current percentage of local purchases (20.7 percent), and separates the results between one percent and five percent. If a one percent preference up to a five percent preference were applied, the possible additional costs could range from \$184,761 to \$923,803 annually.

LOCAL PURCHASES (20.7%)	
Percent	Total
\$	18,476,055
1% \$	184,761
5% \$	923,803

This approach, however, assumes that a one to five percent preference would be applied to all contracts. This is not the case for the one percent. When the one percent preference was in place, during a twelve-month period, an award decision was never made using the one percent preference. The margin of difference is generally higher than one percent.

The second approach considers a contract ceiling of \$100,000 for all local purchases. It is estimated that 7.6 percent of all purchases are between \$10,000 to \$100,000. Applying this percentage to local purchases, an estimated \$1,404,180 are for purchases in this category. Extending this further, if a one percent preference up to a five percent preference were applied, the possible additional costs could range from \$14,042 to \$70,209 annually.

PURCHASES BETWEEN \$10,000 AND UP TO \$100,000	
Percent	Total
\$	1,404,180
1% \$	14,042
5% \$	70,209

## LEGAL REVIEW

### Long Beach City Attorney Conclusions

The Long Beach City Attorney was asked to define the mechanisms necessary to accomplish a change to the local preference and to provide a legal direction as to whether increasing the local preference can withstand a legal challenge.

The City Attorney opined that a Charter Amendment is required if the local preference is to be modified. On November 5, 2002, Charter Section 1803 was changed to enable the City Council to set the nature and amount of the local preference by ordinance. Appendix 2 shows Ballot Measure U that was passed by Long Beach voters. Total Yes votes were 32,311 (52.04%) and No votes were 29,773 (47.96%).

Deputy City Attorney Donna Gwin also analyzed the legality of increasing the local preference in Section 1803 of the City Charter and stated that there are four potential challenges that could be raised.

The first challenge involves the Commerce Clause of the U.S. Constitution that gives the federal government the right to regulate all commerce "among the several States." An out-of-State supplier could claim that an increased local preference is a protectionist practice. However, if raising the local preference does not involve the use of the City's economic power to regulate the local market, this challenge can be met. If the City applied an increased preference to purchases under \$100,000, it is unlikely that the preference would have a "substantial" impact or effect on the market for any goods or services.

The second challenge is that an increase to the local preference violates due process under the Fourteenth Amendment of the U.S. Constitution. However, due process is not violated if the City Council makes a finding that an increase to the local preference would encourage local business and would strengthen or stabilize the local economy. This finding would provide for a rationale to increase the local preference and be in the public interest and can be done at the time a new local preference program is adopted.

The third challenge is that an increase is unconstitutional under the equal protection laws of the U.S. Constitution. If the City Council makes findings that, an increase to the local preference is necessary to ease disadvantages suffered by local businesses due to the higher costs involved in doing business in Long Beach, the increase in the local preference could be justified.

The fourth challenge is based on the Federal Privileges and Immunities Clause. The findings to rebut the other three challenges should also serve to rebut the challenge under this clause.

## CONSIDERATIONS

### The Applicability to Local Business versus Local Small Business

In considering the local preference, a decision needs to be made regarding the applicability to a local business versus a local small business. Currently, the one percent local preference is applied to all equipment, materials and supplies contracts, regardless of amount, with no limits as to the size of the business. The current applicability is to all businesses located in Long Beach.

By creating a ceiling on the eligible contract amount, the City limits its exposure to a fixed amount. It can be argued that the local preference applies more to small businesses by leveling the playing field on the smaller contracts. The following are examples of cities with a contract ceiling.

CITY	DISCOUNT	CONTRACT CEILING	MAX. COST PER CONTRACT
Berkeley	5%	\$ 25,000	\$ 1,250
Los Angeles	10%	\$ 100,000	\$ 10,000
Pasadena	5%	\$ 25,000	\$ 1,250
San Francisco	5%	\$ 10,000,000	\$ 500,000
West Hollywood	4%	\$ 125,000	\$ 5,000

Another method by which to limit the applicability to a small business is to define a business with a cap on the annual revenues that the business can generate. This method, however, results in the need for the City to certify or validate that the bidder is a small business. This additional effort would not be necessary if a contract ceiling is applied. In addition, the revenue cap could result in grievances from large local companies.

Limiting the contract amount does not exclude larger local companies from participating, provides a limit on the potential for large increases in City expenditures, and provides an incentive for local small companies to participate in the City's bid process.

## Diversity Outreach Efforts

The City Council recently approved combining the City's Buy Long Beach Program with the City's DBE/MBE/WBE Program to create the City's Diversity Outreach Program. The goals of the program include promoting and encouraging the participation of the local diverse business community in the City's procurement process.

The Diversity Outreach Officer promotes and encourages participation from local diverse suppliers through a variety of methods including Internet promotion, telephone hotlines, counter resources, personalized buyer service, department contacts, and participation in Long Beach Chamber of Commerce activities. Other efforts include making presentations with local business organizations, participating in regional conferences, and serving on local and regional business organizations.

The efforts of the Diversity Outreach Officer also include encouraging City departments to consider a local small business when making purchases up to \$10,000. The Purchasing Division does not manage these purchases. The departments have discretion and latitude as to their selection of a supplier. Although Financial Policy and Procedure 3-1.4 strongly recommends that departments obtain a minimum of three verbal quotes, the final selection is up to the department.

The monitoring of purchases up to \$10,000 is conducted through a report prepared and published by the Purchasing Division. This report documents purchases that exceed the \$10,000 threshold and holds departments accountable to established procedures when the threshold is exceeded.

Local preference applicability on purchases up to \$10,000 is not monitored. However, departments are encouraged by the Diversity Outreach Officer and the Purchasing Division to buy Long Beach. Currently, an estimated \$29 million annually is purchased through purchase orders up to \$10,000. Applying the current 20.7 percent of local purchases Citywide to this amount results in an estimated \$6.0 million spent annually on local businesses by City departments.

Opportunities exist to increase this amount by strengthening purchasing policies and increasing the outreach participation of City departments. Strengthening purchasing policies for buying locally for department purchases up to \$10,000 is an option that should be considered. In addition, increasing participation of City departments on the Buy Long Beach campaign efforts, as part of the Diversity Outreach Program, would show the local diverse business community that City departments do make an extra effort to outreach locally.



### The Applicability to Services

As passed, Measure U enables the applicability of a local preference to non-professional services. Non-professional services are selected through a competitive bid process and not through a Request for Proposal process. Services that are selected using a competitive bid primarily focus on the hourly rate. The services are considered non-professional and require no specialized skill, education or experience.

Applying a local preference to these non-professional services can be accomplished. However, the one percent sales tax return would not apply. In addition, if the service contract was greater than \$100,000 citywide, then Proposition "L" considerations could be applicable. In this example, award consideration would be given using a local preference, but the required analysis of the cost difference between the supplier and City would have to exclude the local preference.

Professional services contracts, which require the service provider to have a specialized skill, education or experience, are conducted through a Request for Proposal (RFP) process. The selection process focuses on the qualifications of the individual(s) and not on the lowest responsible bidder. Applying a local preference to RFPs undermines the focus on specialized skills, education or experience. In addition, the one percent sales tax return would not apply. As a result, Measure U does not apply to professional services.

### The Applicability to Construction Projects

The bidding procedures for construction contracts currently follow the "Green Book" Standard Specifications for Public Works Construction. These are strict rules on the methods of awarding contracts to the lowest responsible bidder. Applying a local preference to construction contracts requires a detailed evaluation of current procedures and possible changes to the City's adherence to the "Green Book" standards.

In addition, the Department of Public Works is implementing a new program known as Job Order Contracting. This new program changes the methods by which bids for construction projects are evaluated and processed. This program was presented to the City Council on November 26, 2002. Implementation of this program has begun. Once the Job Order Contracting Program is fully implemented, the feasibility of applying the local preference will be evaluated. As a result, it is recommended that the local preference not be applied to construction contracts for one year from the start of the new local preference program.

### The Applicability to Technology and Library Purchases

City Charter Section 1801 enables the Library Department to make certain purchases without advertising to bid. Section 1807 also enables purchases of certain technology goods and services (mostly by the Department of Technology Services) to be made by competitive proposals instead of sealed bids.

The City Attorney's Office has indicated that the local preference does not apply to purchases made under Charter Sections 1801 and 1807.

### The Applicability to Restricted Funds

The City Attorney opined that the local preference could not be applied to purchases made from Tideland funds. As a result, the phrase "solely from funds and revenues of the City, exclusive of funds and revenues derived from tidelands" was not amended and was retained from the original Charter language

The City Attorney has also opined that applying a local preference to purchases funded by grants or by State revenues can be problematic because these funds usually come with restrictions imposed by the granting agency or the State. As a result, it is recommended that the local preference not be applied to purchases any part of which, are made by grants or by State revenues. Further refinement of this applicability shall be made upon implementation of a local preference.

## **RECOMMENDATIONS**

The following recommendations are presented to assist in establishing by ordinance the nature and amount of the local preference.

- Establish a policy that enables the City to encourage businesses located in the Long Beach City limits to file a Seller's Permit (Sales Tax permit) with their Long Beach address.
- Only apply the local preference to those businesses that do have a Seller's Permit on file with the City.
- As supported by the City's Municipal Code, ensure that businesses doing business with the City obtain a Long Beach Business License before obtaining a City contract.
- Establish an annual review process on the applicability and impact of the local preference that enables the City Council to review and make adjustments as necessary.
- Establish a 5 percent local preference and apply it to all materials, equipment, supplies and non-professional services.

- Do not apply the local preference to Technology and Library purchases due these purchases being governed by Charter Sections 1801 and 1807.
- Establish a contract ceiling of \$100,000 on the purchase amount upon which the five percent preference is applied. This supports the City Attorney's recommendation to minimize any "substantial" impact or effect on the market for any goods or services. It also enables City staff to monitor the financial impact to the City and make adjustments and recommendations after one year of applying the five percent preference.
- Do not apply the local preference to construction projects until the Job Order Contracting Program is fully implemented. This program is being implemented by the Department of Public Works and is intended to enhance the City's ability to meet facility maintenance and capital improvement needs. It is a comprehensive procurement system for obtaining construction services.
- As advised by the City Attorney, and included in the ballot language, do not apply the local preference to purchases funded by Tidelands funds, Grant funds, and State of California revenues.
- Request the City attorney to prepare the required ordinance to make the findings necessary to implement a local preference program.
- Require that City departments support the above provisions and support the City's Buy Long Beach campaigns as part of its Diversity Outreach Program.

APPENDIX 1

Cities With Preferential Purchasing Practices for Local Firms				
City	% Discount Applied	Legislated Policy?	Discount Ceiling	Comments
Anaheim	1%	Yes	No	
Bellflower	5%	Yes	No	Must be within the City limits with valid business license
Berkeley	5%	Yes	\$100 to \$25,000 maximum purchase price	Must be within the City limits, have valid business license and seller's permit with City address. Includes services.
Campbell	Informal preference given to local vendors	No		
Chico	Local businesses get preference if quality, price and service are equal	Yes		
Chula Vista	1%	No		
Citrus Heights	5%	By resolution		Nothing in writing online
Claremont	0%	No		
Costa Mesa	1% sales tax back to City considered in bid process	No		
Culver City	1%	Yes		
Fairfield	1%	No		
Fountain Valley	1%	No		
Huntington Beach	1%	Yes	No	
Los Angeles - City	10%	Yes	\$100,000	Applies to firms with annual receipts less than \$3 million that are within LA County
Los Angeles - County	5%	Yes	\$1,000,000	Applies to good, services and construction. Exclusions apply. Must be county-certified SBE.
Morro Bay	5%	Yes	No	Must be local with valid business license and seller's permit with City address. Excludes services.
Mountain View	Local businesses get preference if quality, price and service are equal	Yes		
Napa	3%	Yes	No	Preference applied to competitive bids only in any bid or estimate.
Oakland	10%	Yes	No	Excludes services.

APPENDIX 1

City	% Discount Applied	Legislated Policy?	Discount Ceiling	Comments
Oroville	Preference equals City's 1% share of sales taxes	No		
Pasadena	5%	Yes	Contracts under \$25,000 only	Over \$25,000 the preference reverts to 1%; excludes services.
Rohnert Park	1%	Yes	\$5,000	
Sacramento	Preference equals City's 1% share of sales taxes	Yes		
San Clemente	0%	No		
San Diego	1%	Yes	No	
San Francisco	5%	Yes	\$10,000,000	Applies to goods and services; excludes construction contracts over \$10 million. Discount can be waived for purchases over \$5 million.
San Jose	1%	Yes	No	
Santa Ana	1%	Yes	No	
Santa Maria	0%	No		
Santa Rosa	1%	Yes	\$5,000	
Sonoma	1%	Yes	\$1,000	
Tracy	Local businesses get bids if they are within 1% of the lowest price	No		
West Hollywood	4%	Yes	Contracts up to \$125,000	Preference amount cannot exceed \$5,000; must have valid business license. Excludes services.

**U** Shall Measure U, which amends the Long Beach City Charter (currently providing a one percent preference in bidding by local businesses) to permit the City Council to set the amount of such preference by ordinance, be ratified?

**MEASURE U  
PROPOSED CHARTER AMENDMENT**

(New provisions or language added to existing Charter sections are underlined; language deleted from the existing Charter section are shown in strikethrough type.)

Section 1. That Section 1803 of the Charter of the City of Long Beach be amended to read as follows:

**Sec. 1803. PREFERENCE TO BUSINESSES LOCATED IN THE CITY.**

In determining the lowest responsible bidder for furnishing materials, equipment or supplies, or non-professional services, pursuant to a notice inviting bids, the City Manager shall may apply a local preference for businesses that hold a business license from the City and maintain award the contract to the lowest responsible bidder maintaining a place of business within the City limits if such bid is not more than one percent in excess of the bid filed by the lowest responsible bidder who does not maintain a place of business within the City limits. The nature and amount of the local preference shall be established by the City Council by ordinance.

~~If the award made is based upon the one percent preference, the contract shall specify that the same was entered into with a bidder maintaining a place of business within the City limits of Long Beach.~~

This section shall not be applicable unless payment is made solely from funds and revenues of the City, exclusive of funds and revenues derived from tidelands.

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**IMPARTIAL ANALYSIS OF MEASURE U**

Voter approval of Measure U would amend Section 1803 of the Long Beach City Charter, relating to the preference granted to City businesses in bidding for contracts furnishing materials, equipment or services to the City.

Presently, the Long Beach City Charter provides that a business holding a Long Beach City business license shall receive a one percent preference in bidding to furnish materials, equipment or supplies to the City of Long Beach, when payment is made from City funds, except for those derived from the tidelands.

The proposed amendment would permit the City Council to set the specific nature and amount of this preference by ordinance, and would further permit a provider of non-professional services to receive this preference, in addition to a provider of materials, equipment or supplies.

Robert E. Shannon  
City Attorney

ARGUMENT IN FAVOR OF MEASURE U

PREFERENCE TO LONG BEACH BUSINESS

Endorsed by:

Beverly O'Neill, Mayor - City of Long Beach  
Frank Colonna, Vice-Mayor - City of Long Beach  
Ian Lamont, Publisher - Press Telegram  
George Economides, Publisher - Long Beach Business  
Journal  
John Blowitz, Publisher, Gazette Newspapers  
Mark Gray, Partner - Guzman and Gray, Certified  
Public Accountants  
Jean Bixby Smith, Chairperson, Bixby Land Company

Local businesses are the backbone of our community. MEASURE "U" permits an expansion of the current limits on preferences for local business when competing for City government contracts. The expansion can be enacted only after public hearings by the City Council.

MEASURE "U" WILL:

- CREATE MORE LOCAL JOBS
- EXPAND LOCAL BUSINESSES
- ATTRACT NEW BUSINESS

Pasadena, San Francisco and Oakland currently give preferences to their local businesses. Los Angeles County does the same. With your support, MEASURE "U" will provide this advantage for Long Beach businesses.

Join business and government leaders in support of preferences for local business.

VOTE YES ON MEASURE "U"

Rob Webb  
Councilmember, 8th District

Jackie Kell  
Councilmember, 5th District

Dennis Carroll  
Councilmember, 4th District

Scott Dionne  
Chairman of the Board  
Long Beach Area Chamber of Commerce

Randy Gordon  
President and CEO  
Long Beach Area Chamber of Commerce

ARGUMENT AGAINST MEASURE U

(No Argument was submitted.)

1 ORDINANCE NO. C-

2  
3 AN ORDINANCE OF THE CITY COUNCIL OF THE  
4 CITY OF LONG BEACH AMENDING THE LONG BEACH  
5 MUNICIPAL CODE BY ADDING SECTION 2.84.030  
6 RELATING TO LOCAL PREFERENCE  
7

8 The City Council of the City of Long Beach ordains as follows:  
9

10 Section 1. Section 2.84.030 is hereby added to the Long Beach  
11 Municipal Code to read:

12 2.84.030 Local Preference

13 A. This ordinance implements Section 1803 of the City Charter  
14 and is based on findings that the amount of local preference described in  
15 this ordinance for local businesses is in the public interest and is  
16 necessary to ease disadvantages suffered by local businesses due to the  
17 higher costs of doing business in the City of Long Beach.

18 B. A bid for furnishing materials, equipment, supplies and non-  
19 professional services pursuant to Section 2.84.010 relating to the authority  
20 of the City's Purchasing Agent to make purchases for City departments  
21 reporting to the City Manager shall be reduced by the amounts described  
22 below in making a determination whether or not the bidder is the lowest  
23 responsible bidder, if the bidder meets the following criteria:

- 24 1. Has a current, valid business license from the City of  
25 Long Beach showing a place of business within the City limits; and  
26 2. Has a current, valid seller's permit (also known as a sales  
27 tax permit) showing a place of business within the City limits.

28 C. On enactment of this ordinance and until the beginning of



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City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 the City's fiscal year 2004-2005, a bid from a bidder meeting the criteria  
2 described in sub-section B above shall be reduced by two percent. During  
3 the City's fiscal year 2004-2005, a bid from a bidder meeting these criteria  
4 shall be reduced by three percent. During the City's fiscal year  
5 2005-2006, a bid from a bidder meeting these criteria shall be reduced by  
6 four percent. During the City's fiscal year 2006-2007 and each fiscal year  
7 thereafter, a bid from a bidder meeting these criteria shall be reduced by  
8 five percent.

9 D. This Section shall not apply to bids for purchases made by  
10 the Director of Library Services pursuant to Section 1801 of the City  
11 Charter or to purchases made pursuant to Section 1807 of the City  
12 Charter. This Section shall also not apply to bids for purchases funded by  
13 any Tidelands fund, by any grant funds, and by any funds received from  
14 the State of California. This Section shall not apply to bids for public  
15 works, as that term is defined in Section 1720(a) of the California Labor  
16 Code.

17 Sec. 2. The City Clerk shall certify to the passage of this ordinance  
18 by the City Council and cause it to be posted in three conspicuous places in the City of  
19 Long Beach, and it shall take effect on the thirty-first day after it is approved by the  
20 Mayor.

21 I hereby certify that the foregoing ordinance was adopted by the City  
22 Council of the City of Long Beach at its meeting on \_\_\_\_\_, 2004, by

23 ///  
24 ///  
25 ///  
26 ///  
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28 ///

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the following vote:

Ayes: Councilmembers: \_\_\_\_\_

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Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor