

RESOLUTION NO. 58,291-N.S.

AUTHORIZING THE RESTRICTION OF THE USE, REQUISITION OR PURCHASE DIRECTLY OR INDIRECTLY, BY THE CITY OF BERKELEY OF ANY TROPICAL HARDWOODS OR TROPICAL HARDWOOD PRODUCTS.

WHEREAS, the Council of the City of Berkeley finds as follows:

SECTION 1. PREAMBLE.

- A. The world's equatorial tropical rainforests are the Earth's oldest and richest terrestrial ecological systems. The tropical rainforests are home to half of all the Earth's oldest and richest terrestrial ecological systems. The tropical rainforests are home to half of all the Earth's plant and animal species as well as thousands of indigenous tribal peoples; and
- B. The tropical rainforests are being destroyed worldwide through commercial logging, burning and overcutting, at a rate of 50,000 acres per day, and this rate is accelerating; and
- C. Over one-fourth of all rainforest destruction results from logging of the rainforests to support the international trade in tropical hardwoods; and
- D. The United States is the third largest importer of tropical hardwoods; and
- E. Deforestation of the tropical rainforests has been scientifically linked to atmospheric imbalance and global warming, known as the Greenhouse Effect, caused by increased concentrations of CO₂ in the global atmosphere. The effects of global warming include drought, floods, melting of the polar ice caps and changes in weather patterns worldwide; and
- F. Destruction of the rainforest at the current rate results in the endangerment and extinction of 30 species of plant and animal life each day and a consequent loss of genetic diversity invaluable to the production of medicines and food products; and
- G. Tropical rainforest deforestation causes the displacement of indigenous tribal people, many of whom have never before been contacted by the modern world. Displacement results in the death of these people and destruction of their culture, and loss of their intimate knowledge of commercial, medicinal and nutritional uses of rainforest species, which is often superior to that of any western-trained scientist; and
- H. It is critical to the survival of the planet that the United States and other industrialized nations take immediate measures to curb consumption of tropical hardwoods in order to halt the deforestation of the rainforests and to avert irreversible global environmental destruction; and

- I. Prohibiting the City of Berkeley's use of tropical hardwoods will contribute to this necessary reduction in the demand for tropical rainforest products. Such a prohibition would not create shortages of building supplies for the City, inasmuch as many acceptable non tropical wood products of comparable quality are available; and
- J. On October 24, 1995 the City Council of the City of Berkeley moved to restrict the purchase of tropical hardwoods.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

SECTION 2. DEFINITIONS. As used in this Resolution, the following words and phrases shall have the meanings indicated herein:

"City" shall mean the City of Berkeley, or any department, board, commission or agency thereof.

"City Funds" shall mean all monies or other assets received and managed by, or are otherwise under the control of, the City, and any notes, bonds, securities, certificates of indebtedness or other fiscal obligations issued by the City.

"City Manager" shall mean the City Manager or his or her designee.

"Commodities" shall include, but not be limited to, goods, materials, supplies, equipment, vehicles and machinery.

"Contract" shall include, but not be limited to, any contract, purchase order, term purchase agreement, revolving fund order, or other binding written obligation of the City.

"Doing Business With The City" shall mean entering into or seeking to enter into a contract to provide goods or services to the City.

"Non-tropical Hardwood Equivalents" shall mean any and all hardwood that grows in any geographically temperate regions, as defined by the U.S. Forest Service, and is equivalent to tropical hardwood in density, texture, grain, stability or durability. Non-tropical hardwoods, the use or purchase of which shall be preferred under this article, shall include, but not be limited to the following species:

| <u>Scientific Name</u> | <u>Common Name</u> |
|------------------------|--------------------|
| Fraxinus americana | Ash |
| Tilia americana | Basswood |
| Fagus grandifolia | Beech |
| Betula papyrifera | Birch |
| Juglans cinera | Butternut |
| Populus spp. | Cottonwood |

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|-------------------------|-----------------|
| Taxodium distichum | Cypress |
| Pseudotsuga menziesii | Douglas Fir |
| Ulmus spp. | Elm |
| Nyssa sylvatica | Black Gum |
| Liquidambar styraciflua | Red Gum |
| Celtis laevigata | Hackberry |
| Tsuga heterophylla | West Hemlock |
| Hicoria spp. | Hickory |
| Acer saccharum | Sugar Maple |
| Acer spp. | Soft Maple |
| Quercus spp. | Red Oak |
| Quercus spp. | White Oak |
| Hicoria spp. | Pecan |
| Pinus ponderosa | Ponderosa Pine |
| Pinus spp. | Yellow So. Pine |
| Liriodendron tulipifera | Yellow Poplar |
| Picea sitchensis | Sitka Spruce |
| Platanus occidentalis | Sycamore |
| Juglas nigra | Black Walnut |

"Person" shall mean any individual, firm, partnership, corporation, association, or any other organization or entity, however formed.

"Purchasing Manager" shall mean the Purchasing Manager of the City, or his or her designee.

"Tropical Hardwood" shall mean any and all hardwood, scientifically classified as angiosperm, that grows in any Tropical Rain Forest. Tropical hardwoods, the use or purchase of which shall be governed by this article, shall include, but not be limited to, the following species:

| <u>Scientific Name</u> | <u>Common Name</u> |
|----------------------------|--------------------|
| Vouacapoua americana | Acapu |
| Pericopsis elata | Afromosis |
| Shorea almon | Almon |
| Peltogyne spp. | Amaranth |
| Guibourtia ehie | Amazaque |
| Aningeria spp. | Aningeria |
| Dipterocarpus grandiflorus | Apitong |
| Ochrama lagopus | Balsa |
| Virola spp. | Banak |
| Anisoptera thurifera | Bella Rosa |
| Guibourtia arnoldiana | Benge |
| Detarium Senegalese | Boire |
| Guibourtia demeusil | Bubinga |
| Prioria copaifera | Cativo |
| Antiaris africana | Chenchen |

| | |
|-------------------------------|-----------------|
| Dalbergia retusa | Concobolo |
| Cordia spp. | Cordia |
| Diospyros spp. | Ebony |
| Aucoumea klaineana | Gaboon |
| Chlorophora excelsa | Iroko |
| Acacia koa | Koa |
| Pterygota macrocarpa | Koto |
| Shorea negrosensis | Red Lauan |
| Pentacme contorta | White Lauan |
| Shorea polysperma | Tanguile |
| Terminalia superba | Limba |
| Aniba duckei | Louro |
| Khaya ivorensis | Africa Mahogany |
| Swietenia macrophylla | Amer. Mahogany |
| Tieghemella heckelii | Makore |
| Distemonanthus benthamianus | Movingui |
| Pterocarpus soyauxii | African Paduak |
| Pterocarpus angolensis | Angola Paduak |
| Aspidosperma spp. | Peroba |
| Peltogyne spp. | Purpleheart |
| Gonystylus spp. | Ramin |
| Dalbergia spp. | Rosewood |
| Entandrophragma cylindricum | Sapele |
| Shorea philippinensis | Sonora |
| Tectona grandia | Teak |
| Lovoa trichilioides | Tigerwood |
| Milletia laurentii | Wenge |
| Microberlinia brazzavillensis | Zebrawood |

"Tropical Rainforests" shall mean any and all forests classified by the scientific term "Tropical Moist Forests," the classification determined by the equatorial region of the forest and average rainfall.

"Tropical Wood Products" shall refer to any wood products, wholesale or retail, in any form, including but not limited to veneer, plywood, furniture, cabinets, paneling, mouldings, doorskins, joinery, or sawnwood, which are composed of tropical hardwood. As used herein, the following words and phrases shall have the meanings indicate herein:

"Doorskin" shall mean a thin sheet of wood which is glued onto the frame of a door to form the face of the door.

"Moulding" shall refer to decorative wood used around window and doorframes, ceilings, and corners.

"Paneling" shall mean any thin sheet or sheets of attractive wood, intended to be used as wall covering including any sheet consisting of a veneer glued onto some backing material.

"Particle Board" shall mean any wood sheet or board created by compressing wood chips and particles from logs, trees or industrial residue.

"Plywood" shall mean any wood sheet created by gluing together thinner sheets (veneers) of any species.

"Sawnwood" shall mean lumber or any form of wood which is sawn or chipped lengthwise in either a rough or smooth cut.

"Veneer" shall mean a very thin slice of wood, between 1/16 inch to 1/125 inch in width, used in plywood, paneling, furniture exterior, and doorskins.

SECTION 3. CONTRACTUAL SERVICES.

A. Prohibited Transactions.

1. The City shall not enter into or renew any contractual agreement with any person for the provision of services, the performance of which calls for the use of any tropical hardwood or wood product.
2. In the case of any bid proposal or solicitation, request for bid or proposal or contract for the construction of any public work, building maintenance or improvement for or on behalf of the City, the City shall not require or permit the use of any tropical hardwood or wood product.
3. Every bid proposal, solicitation, request for bid or proposal and contract for the construction of any public work, building maintenance or improvement shall contain a statement that any bid, proposal or other response to a solicitation for bid or proposal which proposes or calls for the use of any tropical hardwood or wood product in performance of the contract shall be deemed non-responsive.

B. Non-applicability; Findings; Alternates.

1. Section 3 shall not apply to bid packages advertised and made available to the public or any competitive and sealed bids received by the City entered into prior to the effective date of this Resolution.
2. Section 3 shall not apply to any amendment, modification or renewal of a contract, which contract was entered into prior to the effective date of this Resolution where such application would delay timely completion of a project or involve an increase in the total monies to be paid by the City under that contract.

3. The provisions of Section 3 shall not apply where the City Manager finds that:
 - a. No person doing business with the City is capable of performing the contract using acceptable non-tropical hardwood equivalents as defined under Section 2; or
 - b. The inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract;
 - c. The use of tropical woods is deemed necessary for purposes of historical restoration and there exists no available acceptable non-tropical wood equivalent.

SECTION 4. PURCHASE OF COMMODITIES.

A. Prohibited Transactions.

1. The City shall not purchase or obtain for any purpose any tropical hardwoods or tropical hardwood products, wholesale or retail, in any form.
2. The City shall not purchase or obtain for any purpose any wood or wood products from any person that purchases or sells tropical hardwood or wood products, wholesale or retail, in any form.

B. Exceptions. This Section 4 shall not apply to:

1. Any binding contractual obligations for purchase of commodities entered into prior to the effective date of this Resolution; or
2. The purchase of any tropical hardwood or tropical hardwood product for which there is no acceptable non-tropical hardwood equivalent; or
3. Where the City Manager finds that no person or entity doing business in the City is capable of providing acceptable non-tropical hardwood equivalents sufficient to meet the City's contract requirements; or
4. Where the inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

SECTION 5. CONTRACT CONDITIONS.

- A. All contracts for wood products or a service involving wood products entered into by any department of the City for public works or improvements to be performed or for any wood, wood products, or services involving wood to be purchased with City funds shall include as a material condition to that agreement the following paragraph in the contract:

"Except as expressly permitted by the application of Sections 3.B. and 4.B. of Resolution No. 58,291 N.S., Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods or tropical wood products."

- B. Every contract shall also contain a statement urging companies to: 1) refrain from importing, purchasing, obtaining, or using for any purposes, any tropical hardwood or tropical hardwood product; and 2) purchase wood that is certified "sustainably" produced lumber.

SECTION 6. RULES AND REGULATIONS.

- A. The City Manager shall promulgate any rules and regulations necessary or appropriate to carry out the purposes and requirements of this Resolution.
- B. All contracts and other similar written agreements shall incorporate this Resolution by reference whenever applicable and shall provide that the failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract.

SECTION 7. PENALTY.

- A. Whenever any department of the City discovers, after an investigation by the City Manager and the City Attorney, that a person being considered for a contract or under contract with the City has, in connection with the bidding, execution or performance of any City contract (1) falsely represented to the City the nature or character of the wood products offered, used or supplied under the contract, or (2) provided the City with tropical hardwood or tropical hardwood products in violation of this Resolution, the rules and regulations adopted pursuant to this Resolution or contract provisions pertaining to the prohibition against the use or purchase of tropical hardwood, the City Manager shall have the authority to impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this Resolution which shall include, but are not limited to:
1. refusal to certify the award of a contract;
 2. suspension of a contract;
 3. ordering the withholding of funds due the contractor under any contract with the City;

4. ordering the revision of a contract based upon a material breach of contract provisions or pertaining to representations made in bidding, execution or performance of the contract;
5. disqualification of a bidder or contractor from eligibility for providing commodities or services to the City for a period not to exceed five years, with a right to review and reconsideration by the City after two years upon a showing of corrective action indicating violations are not likely to reoccur.

- B. All contracts shall provide that in the event any bidder or contractor fails to comply in good faith with any of the provisions of this Resolution the bidder or contractor shall be liable for liquidated damages in an amount equal to the bidder's or contractor's net profit under the contract, or 5% (five percent) of the total amount of the contract dollars, whichever is greatest. All contracts shall also contain a provision whereby the bidder or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the bidder or contractor from any contract with the City of Berkeley.

SECTION 8. IMPLEMENTATION REPORTS. The Purchasing Manager shall provide written reports on the implementation of this Resolution to the City Council (1) at the first City Council meeting held six (6) months after this Resolution has take effect; and (2) semi-annually thereafter.

This Resolution shall expire ten (10) years from its effective date unless the City Council finds that the purposes identified in Section 1 have not yet been achieved, in which case the Resolution may be extended.

SECTION 9. SEVERABILITY. If any section, subsection, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court or federal or state agency or competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

The foregoing Resolution was adopted by the Berkeley City Council on December 12, 1995, by the following vote:

Ayes: Councilmembers Armstrong, Maio, Olds, Shirek, Spring, Wainwright, Woodworth, and President Dean.

Noes: None.

Abstain: None.

Absent: Councilmember Woolley-Bauer.

SHIRLEY DEAN
Mayor and President of the Council

Attest: SHERRY M. KELLY
City Clerk and Clerk of the Council

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