

INTRODUCED BY:

MAYOR BROWN



ORDINANCE NO. 2020-04

A BILL TO BE ENTITLED

AN ORDINANCE CREATING A NEW SECTION 2-388 (BUY AMERICAN PREFERENCE IN CONTRACTS FOR GOODS AND GENERAL SERVICES), CHAPTER 2 (ADMINISTRATION), ARTICLE VI (FINANCE), DIVISION 2 (PURCHASING AND CONTRACTS), CITY OF NEPTUNE BEACH CODE OF ORDINANCES, TO CREATE A PREFERENCE FOR AMERICAN-MADE GOODS AND GENERAL SERVICES IN CONTRACTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Buy American Act of 1933, 41 U.S.C. 83, requires that the Federal Government in procurement and certain matters involving federal financial assistance utilize U.S. products for the purchase or acquisition of goods, products or materials, as defined in the Buy American Act, whenever possible with some exceptions; and

WHEREAS, in recent years and culminating with the issuance of several Executive Orders, President Trump has issued directives on July 15, 2019, Executive Order 13881 (Maximizing Use of American-Made Goods, Products and Materials), Executive Order 13788 of April 18, 2017 (Buy American and Hire American) and Executive Order 13858 of January 31, 2019 (Strengthening Buy-American Preferences for Infrastructure Projects), which each have reiterated the intent of the Administration to enforce the Buy American Act of 1933 to the greatest extent permitted by law; and

WHEREAS, while the Buy American Act of 1933 only pertains to procurement involving public buildings of the Federal Government and those of certain U.S. territories; and

WHEREAS, the City Council of the City of Neptune Beach (the "City") desires, pursuant to its legislative policy-making authority, to adopt a similar policy as it pertains to City procurement and the expenditure of local public funds, as permitted by federal and state regulations, to create a domestic preference for City procurement purposes of goods and materials that are manufactured, assembled or produced in the United States; and

WHEREAS, the Council finds that establishing a City procurement policy that creates a domestic preference for goods and materials that are manufactured, assembled or produced in the United States promotes the local economy, the economies of neighboring counties and municipalities, as well as strengthens state and

national economic interests, and further promotes security, good government and the general convenience of its citizens, and declares it a valid municipal purpose; and

WHEREAS, it is the firm intent of the City Council that this policy not supplant other federal, state and local law to the extent that this policy would be inconsistent with certain mandates in federal and state law, but is adopted to allow the City to apply a domestic preference for American-made goods and products when local public funds are expended;

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF NEPTUNE BEACH, FLORIDA, THAT:

Section 1. Creating a new Section 2-388 (Buy American preference in contracts for goods and general services), Code of Ordinances. A new Section 2-388 (Buy American preference in contracts for goods and general services), Chapter 2 (Administration), Article VI (Finance), Division 2 (Purchasing and Contracts), City of Neptune Beach Code of Ordinances is hereby created to read as follows:

**CHAPTER 2. ADMINISTRATION
ARTICLE VI. FINANCE
DIVISION 2. PURCHASING AND CONTRACTS**

* * *

Sec. 2-388. Buy American preference in contracts for goods and general services.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Bid means a competitive bid procedure established through the issuance of an invitation for bid. The term "bid," as used herein, shall not include requests for proposals (unless specified in the RFP document), requests for qualifications, requests for quotes and requests for information.

Buy American preference means and shall apply to the following products and services that are:

1. *Manufactured*. The term "manufactured" is interpreted to mean to make or process a raw material into a finished product or to turn-out in a mechanical manner;
2. *Assembled*. The term "assembled" is interpreted to mean to fit or to join parts together into a finished product;
3. *Produced*. The term "produced" is interpreted to mean to create or make from raw materials.

To qualify for this preference, 51 percent of the components of the final produce manufactured, assembled or produced to be sold to the City must be

made in the United States. The City Manager shall resolve any issues relating to Buy American preferential status, and that decision on whether a vendor is eligible for a Buy American preference shall be final.

General services means support services performed by an independent contractor requiring specialized knowledge, experience, or expertise.

Goods includes, but is not limited to, supplies, equipment, materials, and printed matter.

(b) Exemptions. The provisions of this section do not apply to:

1. Purchases or contracts with an estimated cost of \$10,000.00 or less. The City Manager and procurement staff will attempt to select products manufactured, assembled or produced in the United States if the quality and price are comparable with other goods.
2. Professional services, which are defined, for purposes of this section, as any services where the City is obtaining advice, instruction, or specialized work from an individual, firm, or corporation specifically qualified in a particular area, and also those services procured pursuant to F.S. § 287.055, the Consultants' Competitive Negotiation Act.
3. Bids for the purchase of, or contract for, the construction/ renovation of public buildings, facilities, public works, or other public construction projects where federal funds are involved. The federal guidelines as to use of the federal funds shall prevail as to the federal funds.
4. Goods or services provided under a cooperative purchasing agreement or utilization of other agency contracts (piggyback contracts).
5. Purchases made or contracts let under emergency or noncompetitive situations (sole source, or a special procurements/bid waiver), or for legal services.
6. The business is determined to be unqualified to perform the work as determined by the City.
7. The business submits a bid that exceeds the projected budget.
8. Projects which have been undertaken by the City prior to the effective date of this section.

(c) Preference in purchase of goods or general services. Except where federal, state or local laws, regulations or policies mandates to the contrary, in the purchase of goods or general services by means of a competitive bid, a preference will be given to a responsive and responsible vendor offering American manufactured, assembled or

produced goods or general services, who is within five percent of the lowest responsive and responsible bidder, by way of an opportunity of providing said goods or general services for the lowest responsive and responsible bid amount.

(d) Preference must be asserted. Said five percent Buy American preference must be asserted by the party seeking it at the time of the competitive bid with the submittal of documentation supporting the assertion that a product is American manufactured, assembled or produced, and shall be calculated by the procurement division in rating competitive bids.

(e) Comparison of qualifications. The preferences established herein in no way prohibit the right of the City Manager or their designee to compare quality of goods or general services proposed for purchase and compare qualifications, character, responsibility and fitness of all person, firms or corporations submitting bids. Further, the preferences established herein in no way prohibit the right of the City Manager or their designee from determining based on criteria and standards developed administratively to allow for selection by preference permitted in another section of this Article.

(f) Waiver. The application of the Buy American preference to a particular purchase, contract, or category of contracts in excess of \$100,000.00 for goods and general services may be waived upon written recommendation of the City Manager and approval of the City Council.

(g) Administrative Policy for Implementation. The City Manager shall be charged with the responsibility to promulgate an administrative policy or regulations consistent with this Section which establishes criteria and procedures for the implementation of this policy including matters involving the consideration of exemptions, comparison of qualifications, and waiver of the policy as provided herein.

(h) Declaration of municipal purpose. It is hereby declared that the carrying out of the purposes of this section by the City is deemed to be furthering a proper municipal purpose.

Section 2. Severability. If any section, sentence, clause, phrase, or word of this Ordinance is, for any reason, held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Ordinance, and it shall be construed to be the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein.

Section 3. Effective Date. This Ordinance shall become immediately upon passage by the City Council.

VOTE RESULTS OF FIRST READING:


| | |
|--------------------------|-----|
| Mayor Elaine Brown | YES |
| Vice Mayor Fred Jones | YES |
| Councilor Kerry Chin | YES |
| Councilor Josh Messinger | YES |
| Councilor Scott Wiley | YES |

Passed on First Reading this 1st day of June, 2020.

VOTE RESULTS OF SECOND AND FINAL READING:

| | |
|--------------------------|-----|
| Mayor Elaine Brown | YES |
| Vice Mayor Fred Jones | YES |
| Councilor Kerry Chin | YES |
| Councilor Josh Messinger | YES |
| Councilor Scott Wiley | YES |

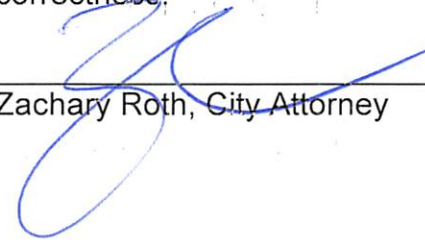
Passed on Second and Final Reading this 29th day of June, 2020.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, CMC, City Clerk

Approved as to form and
correctness:


Zachary Roth, City Attorney

