

1 [Administrative, Environment Codes - Clean Construction Ordinance Updates]

2

3 **Ordinance amending the Administrative Code to require a Construction Emissions**  
 4 **Minimization Plan and monitoring for public projects within the Air Pollutant Exposure**  
 5 **Zone, as mapped pursuant to Health Code, Article 38; amending the Administrative and**  
 6 **Environment Codes to reflect these requirements; and making environmental findings.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 8 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
 10 **Board amendment additions** are in double-underlined Arial font.  
 11 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 12 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 13 subsections or parts of tables.

11

12 Be it ordained by the People of the City and County of San Francisco:

13

14 Section 1. Findings.

15

16 (a) The Planning Department has determined that the actions contemplated in this  
 17 ordinance comply with the California Environmental Quality Act (California Public Resources  
 18 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
 19 Supervisors in File No. \_\_\_\_ and is incorporated herein by reference.

19

20 Section 2. The Administrative Code is hereby amended by revising Section 6.25, to  
 21 read as follows:

22

**SEC. 6.25. CLEAN CONSTRUCTION.**

23

**(a) Findings.**

24

25 (1) Scientific studies have found an association between exposure to particulate matter and significant human health problems, including: aggravated asthma; chronic bronchitis; reduced lung

1 function; irregular heartbeat; heart attack; and premature death in people with heart or lung disease.  
2 Exposure to air pollutants that are carcinogens have significant human health consequences. For  
3 example, exposure to diesel exhaust is an established cause of lung cancer.

4 (2) Heart disease and stroke are the first and fourth leading causes of death in the U.S.  
5 respectively; air pollution affects heart health and can trigger heart attacks and strokes that cause  
6 disability and death; one in three Americans has heart or blood vessel disease and is at higher risk  
7 from air pollution. Impacts on the lungs may take several forms. Short-term effects include deficits in  
8 lung function that can limit breathing, especially during exercise. Irritants may cause airway  
9 constriction or chest tightening that is uncomfortable or limiting to normal activity. These changes in  
10 lung function sometimes have underlying lung tissue inflammation which over the long term may lead  
11 to chronic lung disease. Exposure to air pollutants is among one of many contributing factors to most  
12 of the leading causes of death recorded for San Francisco's population (ischemic heart disease; lung,  
13 bronchus and tracheal cancers; cerebrovascular disease; chronic obstructive pulmonary disease;  
14 hypertensive heart disease and lower respiratory infection).

15 (3) Persons living in close proximity to air pollution sources, such as freeways or busy  
16 roadways, have poorer lung functions and are more susceptible to develop asthma and other  
17 respiratory problems, compared with persons living at a greater distance from sources. The California  
18 Air Resources Board's 2005 Land Use Guidance document, Air Quality And Land Use Handbook: A  
19 Community Health Perspective, reviewed traffic-related air pollution studies and found that particulate  
20 matter pollution levels decrease by about 70 percent at 500 feet from freeways and high-traffic  
21 roadways, defined as urban roads with 100,000 vehicles/day or rural roads with 50,000 vehicles/day.

22 (4) Proximity to sources of air pollution increases exposure and proximity to sources is  
23 established to be more common for the poor and for certain ethnic minorities.

24 (5) Consequently, health vulnerability varies among neighborhoods and populations within  
25 San Francisco, as measured by population health records of air pollution-associated hospital

1 discharges and emergency room visits, and non-accident mortality. Health vulnerable populations are  
2 likely to have more significant health consequences from air pollutant exposure compared to  
3 populations that are less vulnerable.

4 (6) Construction activities can result in temporary diesel exhaust emissions from  
5 construction equipment, creating a public health risk.

6 (7) According to the California Air Resources Board, off-road equipment, which includes  
7 construction equipment, is the sixth largest source of diesel particulate matter emissions in California.

8 (8) The City and County of San Francisco (“the City”) has an interest in the protection of  
9 public health and the reduction of exposure to diesel emissions generated at publicly funded  
10 construction sites.

11 (9) The City can reduce the exposure to diesel exhaust emissions from off-road diesel  
12 equipment by requiring City contractors undertaking public works projects within the Air Pollutants  
13 Exposure Zone, as defined, to utilize off road diesel equipment with lower emissions and to reduce  
14 exhaust emissions through a construction emissions minimization plan.

15 (10) Newer technologies, such as verified diesel emission control strategies, combined with  
16 newer engines (Tier 2 or later) can reduce particulate matter emissions from construction equipment  
17 between 89 and 94 percent compared to older, dirtier equipment.

18 (11) Requiring newer technologies and newer engines in limited areas within San Francisco  
19 is feasible given the wide availability of newer technologies and, based on California Air Resources  
20 Board inventories, the estimated availability of newer engines across all sizes of fleets, equipment  
21 types, and sizes of engines. Furthermore, as the useful life of older engines becomes obsolete, both  
22 state and federal regulations will require newer, cleaner equipment, such as the California Air  
23 Resources Board adopted In-Use Off-Road Diesel Vehicle Regulation.

1           (12) The City can further reduce the exposure to diesel emissions from off-road diesel  
2 equipment by creating and implementing a bidding incentive for City contractors to utilize the cleanest  
3 possible off-road diesel equipment on public works projects.

4           (13) The City can reduce the exposure to diesel emissions from off-road diesel vehicle fleets  
5 by seeking funding to retro-fit City owned equipment and other off-road diesel equipment operated in  
6 the City from existing incentive programs such as the Carl Moyer Air Quality Standards Attainment  
7 Program.

8           (14) Under this Section, the City wishes to exercise its power to make economic decisions  
9 involving its own funds as a participant in the marketplace and to conduct its own business as a  
10 municipal corporation to ensure that purchases and expenditures of public monies are made in a  
11 manner consistent with clean construction practices.

12           (15) Nothing in this Section shall be interpreted or applied so as to create any power or duty  
13 in conflict with any federal or state law.

14  
15           **(ab) Definitions:**

16           “Air Pollutant Exposure Zone,” as defined in Article 38 of the Health Code.

17           “Alternative Fuels” includes natural gas or biodiesel.

18           “Alternative Sources of Power” means utility-based electric power or other power sources  
19 other than diesel engines.

20           “ARB” means the California Air Resources Board.

21           ~~(1) “Biodiesel” means a fuel comprised of mono-alkyl esters of long chain fatty acids derived~~  
22 ~~from vegetable oils or animal fats, designated B100 or “neat biodiesel”, and meeting the requirements~~  
23 ~~of ASTM D 6751. B20 is a mixture of 20% biodiesel and 80% petroleum.~~

24           (2) “City” means the City and County of San Francisco.

1           (3) “Clean Construction” means performing all work required to be performed under  
2 a public works contract meeting the requirements in Section 6.25(c)(1) and (2). ~~(1) utilizing only off-~~  
3 ~~road equipment and off-road engines fueled by biodiesel fuel grade B20 or higher and (2) utilizing only~~  
4 ~~high use equipment that either (a) meets or exceed Tier 2 standards for off-road engines or (b) operates~~  
5 ~~with the most effective verified diesel emission control strategy.~~

6           “Construction Activities” means performing all work involved in or required for Construction.

7           “Construction” means building, demolition, excavation, grading, or foundation work, whether  
8 or not it requires a City permit, but does not include a site permit.

9           “Construction Phase” means a particular construction activity over a certain period of time.  
10 Construction phases may include, but are not limited to, demolition, site preparation, grading, building  
11 construction, architectural coatings, and paving. Construction phases may occur at the same time.

12           “Contractor” means, as defined in Section 6.1(G) of this Code, a party who contracts directly  
13 with the City and County of San Francisco to perform construction services relevant to a public work  
14 or improvement.

15           “Director” means the Director or Department Head of a City Department with jurisdiction  
16 over the construction activities, or his or her designee.

17           (4) ~~“Director” means the Director of the Department of the Environment, or his or her~~  
18 ~~designee.~~

19           “Equipment” means off-road and on-road equipment.

20           “Equipment Type” means a description of the off-road equipment. This off-road equipment  
21 includes bore/drill rigs, cranes, crawler tractors, excavators, graders, off-highway tractors, off-  
22 highway trucks, other construction equipment, pavers, paving equipment, rollers, rough terrain  
23 forklifts, rubber tired dozers, rubber tired loaders, scrapers, skid steer loaders, surfacing equipment,  
24 tractors/loaders/backhoes, and trenchers.

1           ~~(5) “High Use Vehicles” means off-road vehicles or off-road engines used an aggregate of 20~~  
2 ~~or more hours during any portion of the project.~~

3           (6) “Major construction project” means a public work to be performed within the  
4 geographic limits of the City that utilizes off-road equipment and that is estimated to require  
5 twenty (20) or more cumulative non-consecutive days of work to complete.

6           ~~(7) “Most effective verified diesel emission control strategy” means a device, system~~  
7 ~~or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code~~  
8 ~~of Regulations to achieve the highest level of pollution control from an off-road vehicle.~~

9           (8) “Off-road engine” means a non-road engine as defined in Title 40 of the Code of  
10 Federal Regulations, Section 89.2 ~~a diesel internal combustion engine (including the fuel system)~~  
11 ~~including without limitation, internal combustion engines used to power excavators, backhoes,~~  
12 ~~bulldozers or similar equipment used in any project subject to this Chapter. “Off road engine” does~~  
13 ~~not include portable engines or stationary engines (engines that remain at one location for more than~~  
14 ~~12 months).~~

15           (9) “Off-road equipment vehicle” means equipment with off-road engines greater than  
16 twenty-five (25) horsepower and operating for more than twenty (20) total hours over the entire  
17 duration of construction activities. ~~a vehicle that is propelled by an off-road engine of twenty-five~~  
18 ~~horsepower or greater, including, without limitation, excavators, backhoes, bulldozers and similar~~  
19 ~~equipment used in any project subject to this Chapter. “Off road vehicle” does not include a~~  
20 ~~horticultural maintenance vehicle used for landscaping purposes that is powered by an off-road engine~~  
21 ~~of sixty-five horsepower or less and that is not used in any construction program or project. “Off road~~  
22 ~~vehicle” does not include portable equipment.~~

23           “On-Road Equipment” means heavy-duty vehicles as defined in Title 40 of the Code of Federal  
24 Regulations, Section 86.1803-01.

1 “Portable Diesel Engines” means portable as defined in 71 California Code of Regulations,  
2 Section 93116.2.

3 “Posted at the Perimeter of the Construction Site” means one sign on each portion of the  
4 construction site facing a public right-of-way.

5 (H) “Public work” means a contract for the erection, construction, renovation,  
6 alteration, improvement, demolition, excavation, installation, or repair of any public building,  
7 structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility  
8 that is performed by or for the City, and the cost of which is to be paid wholly or partially out of  
9 moneys deposited in the City Treasury or out of trust monies under the control of or collected  
10 by the City.

11 (I) “Sensitive Use Site” means as defined in Article 38 of the Health Code.  
12 a hospital or other medical institution with facilities for inpatient care, a residential care  
13 facility providing lodging board and care for a period of 24 hours or more to seven or more persons, a  
14 child care facility providing less than 24 hour care for 13 or more children, or an elementary or  
15 secondary school, either public or private, or residences.

16 (J) “Tier 2 Off-Road Emission Standards” are those means the Tier 2 new engine emission  
17 standards for an off road engine as described in Division 3 Chapter 9, Article 4, Section  
18 2423(b)(1)(A) of in Title 13 of the California Code of Regulations, Section 2423(b)(1)(A) and/or  
19 Title 40, Code of Federal Regulations, Part 89.112(a), as amended.

20 “VDECS” means a verified diesel emission control strategy, designed primarily for the  
21 reduction of diesel particulate matter emissions, which has been verified by ARB pursuant to  
22 “Verification Procedures, Warranty and In-Use Strategies to Control Emissions from Diesel Engines,”  
23 Title 13, California Code of Regulations, sections 2700-2710. VDECS can be verified to achieve Level  
24 1 diesel particulate matter reductions (at least 25 percent), Level 2 diesel particulate matter reductions  
25 (at least 50 percent), or Level 3 diesel particulate matter reductions (at least 85 percent).

1 “USEPA” means the United States Environmental Protection Agency.

2 **(bc) Clean Construction on Major Construction Projects.**

3 (1) Requirement. Clean Construction shall be required for all public works contracts  
4 for major construction projects ~~solicited on or after a date two years from the effective date of this~~  
5 ~~Ordinance~~. For all such contracts, the department head or officer calling for bids shall specify  
6 in the Advertisement for Bids that Clean Construction is required for the performance of all  
7 work unless a waiver of all or part of the requirements of this Chapter has been granted under  
8 Section 6.25(bc)(3).

9 (A) For public works projects located outside Air Pollutant Exposure Zone, the  
10 Contractor or City Department carrying out the Construction Activities shall utilize only off-road  
11 equipment and off-road engines fueled by biodiesel fuel grade B20 or higher and utilize only off-road  
12 equipment that either:

13 (i) meet or exceed Tier 2 standards for off-road engines; or

14 (ii) operate with the most effective VDECS.

15 (B) For public works projects located within the Air Pollutant Exposure Zone that  
16 require a City permit, prior to issuance of a such permit the Contractor or City Department carrying  
17 out Construction Activities shall submit a Construction Emissions Minimization Plan to the Director  
18 for review and approval. If the project does not require a City permit, the Contractor or City  
19 Department carrying out Construction Activities shall submit the Construction Emissions Minimization  
20 Plan to the Director prior to commencing work. The Construction Emissions Minimization Plan shall  
21 detail project compliance with the following requirements:

22 (i) All off-road equipment shall meet the following requirements:

23 a. Where access to alternative sources of power is available,  
24 portable diesel engines shall be prohibited;

25 b. All off-road equipment shall have:

1 1. Engines that meet or exceed either USEPA or ARB Tier 2  
2 off-road emission standards, and

3 2. Engines that are retrofitted with an ARB Level 3 VDECS.  
4 Equipment with engines meeting Tier 4 Interim or Tier 4 Final off-road emission standards  
5 automatically meet this requirement, therefore a VDECS would not be required.

6 c. Exceptions:

7 1. Exceptions to the alternative source of power requirement  
8 may be granted by the Director if the Contractor or City Department carrying out the Construction  
9 Activities has submitted information providing evidence to the satisfaction of the Director that an  
10 alternative source of power is limited or infeasible at the project site. Under this circumstance, the  
11 Contractor or City Department shall submit documentation of compliance with Section  
12 6.25(c)(1)(B)(i)b. for onsite power generation.

13 2. Exceptions to the equipment requirements may be granted  
14 by the Director if the Contractor or City Department has submitted information providing evidence to  
15 the satisfaction to the Director that a particular piece of off-road equipment with an ARB Level 3  
16 VDECS is: technically not feasible, would not produce desired emissions reduction due to expected  
17 operating modes, installing the VDECS would create a safety hazard or impaired visibility for the  
18 operator, or there is a compelling emergency need to use off-road equipment that are not retrofitted  
19 with an ARB Level 3 VDECS and the Contractor or City Department Contractor or City Department  
20 has submitted documentation to the Director that the requirements of this exception provision apply.

21 3. If an exception from the type of equipment requirement as  
22 allowed above, is granted the Contractor or City Department shall provide the next cleanest piece of  
23 off-road equipment as provided in the schedule in Table 6.25.1 below.

**Table 6.25.1**  
**Off-Road Equipment Compliance Step down schedule\***

<u>Compliance Alternative</u>	<u>Engine Emission Standard</u>	<u>Emissions Control</u>
<u>1</u>	<u>Tier 2</u>	<u>ARB Level 2 VDECS</u>
<u>2</u>	<u>Tier 2</u>	<u>ARB Level 1 VDECS</u>
<u>3</u>	<u>Tier 2</u>	<u>Alternative Fuel**</u>

\*How to use the table. If the equipment requirements cannot be met as determined by the Director, then the Contractor or the Department would need to meet Compliance Alternative 1. Should the Contractor or City Department not be able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 would need to be met. Should the Contractor or City Department not be able to supply off-road equipment meeting Compliance Alternative 2, then Compliance Alternative 3 would need to be met.

\*\*Alternative fuels are not a VDECS

(ii) Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than two minutes at any location, except as allowed for in applicable state regulations regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). Legible and visible signs shall be posted in multiple languages (e.g., English, Spanish, Chinese) in designated queuing areas and at the construction site to remind operators of the two minute idling limit.

(iii) Contractors or City Departments carrying out Construction Activities shall train construction workers and operators on the maintenance and tuning of construction

1 equipment, and require that such workers and operators properly maintain and tune equipment in  
2 accordance with manufacturer specifications.

3 (iv) The Construction Emissions Minimization Plan shall include estimates of  
4 the construction timeline by phase, with a description of each piece of off-road equipment required for  
5 every construction phase. Off-road equipment descriptions and information may include, but is not  
6 limited to: equipment type, equipment manufacturer, equipment identification number, engine model  
7 year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and  
8 hours of operation. For the VDECS installed: technology type, serial number, make, model,  
9 manufacturer, ARB verification number level, and installation date and hour meter reading on  
10 installation date. For off-road equipment using alternative fuels, reporting shall indicate the type of  
11 alternative fuel being used.

12 (v) The Construction Emissions Minimization Plan shall be available to the  
13 public for review on-site during working hours. A legible and visible sign shall be posted at the  
14 perimeter of the construction site indicating to the public the equipment requirements of the  
15 Construction Emissions Minimization Plan; the fact that the public may request it at any time within  
16 working hours; and how to request inspection of the Construction Emissions Minimization Plan.

17 (vi) The Construction Emissions Minimization Plan shall include a statement  
18 that the Contractor or City Department carrying out Construction Activities certifies compliance with  
19 the Plan, and that the contract specifications reflect all applicable requirements of the Construction  
20 Emissions Minimization Plan.

21 (vii) Monitoring. After commencement of construction activities, the  
22 Contractor or City Department carrying out Construction Activities shall maintain quarterly reports at  
23 the construction site indicating compliance with all the requirements of the Construction Emissions  
24 Minimization Plan. After completion of Construction Activities and prior to receiving a final certificate  
25 of acceptance, or within six month of cessation of of Construction Activities if a certificate of

1 acceptance is not required, the Contractor or City Department carrying out Construction Activities  
2 shall submit to the Director a final report summarizing construction activities, including the start and  
3 end dates and duration of each construction phase and the actual detailed information required in the  
4 Construction Emissions Minimization Plan.

5 (2) Contract Provisions and liquidated damages. Every contract for which Clean  
6 Construction is required under Section 6.25(~~b~~c)(1)(A) or Section 6.25(~~b~~)(1)(B) shall contain  
7 provisions, in a form to be approved by the City Attorney: (A) requiring Clean Construction, (B)  
8 authorizing waivers as set forth in Section 6.25(~~c~~b)(3), and (C) specifying liquidated damages  
9 in the amount of \$100.00 per day per each piece of off-road equipment and each off-road  
10 engine utilized to complete work on the project in violation of the Clean Construction  
11 requirements.

12 (3) Waivers. Waivers from the requirements of this Chapter are available under the  
13 following circumstances:

14 (A) Emergency. A contract awarding department may grant itself a waiver from  
15 this Chapter when the contract awarding authority certifies in writing to the Director, prior to  
16 the Controller's contract certification, that the contract is being awarded under the emergency  
17 provisions of Administrative Code Section 6.60 and that there is no immediately available  
18 contractor capable of performing the work as Clean Construction. In such case, the contract  
19 awarding authority shall within two business days notify the Director in writing of the  
20 emergency that prevented compliance with this Chapter and describe steps being taken to  
21 safeguard public and City employee health during the noncomplying work, and shall explain  
22 steps to reduce the likelihood that a similar emergency waiver would be required in the future.

23 (B) Performance Standards. The Director may grant a waiver in whole or part  
24 from this Chapter prior to the solicitation of bids upon a showing by the contract awarding  
25 authority that there are no complying off-road vehicles or off-road engines for some or all of

1 the required work, provided that the contract awarding authority provides a written  
2 memorandum explaining the need for the waiver and the steps that will be taken to safeguard  
3 public and City employee health during the noncomplying work.

4 (C) Cost Prohibitive. The Director may grant a waiver in whole or part from this  
5 Chapter prior to the solicitation of bids upon a showing by the contract awarding authority that  
6 compliance would be cost prohibitive under the circumstances, provided that the contract  
7 awarding authority provides a written memorandum explaining the need for the waiver and the  
8 steps that will be taken to safeguard public and City employee health during the noncomplying  
9 work.

10 (D) Other. The Director may grant a waiver in whole or part from this Chapter  
11 prior to the solicitation of bids or may waive the biodiesel and/or emissions standards for  
12 Clean Construction in advance of any violation of the Clean Construction requirements as to  
13 specific off-road equipment or off-road engines essential to complete the work provided that  
14 the contract awarding authority provides a written memorandum demonstrating a reasonable  
15 basis for the waiver including a reasonable plan to minimize the use of noncomplying  
16 equipment or engines, and the steps that will be taken to safeguard public and City employee  
17 health during the noncomplying work, and further provided that such post-award waivers for  
18 specific equipment may not exceed 25% of the total operating hours of all off-road vehicles or  
19 off-road engines used on the project.

20 (E) Rules and Regulations. After a public hearing, the Director, in consultation  
21 with the contract awarding authorities, may promulgate rules, regulations or guidelines as  
22 necessary or appropriate to carry out the purposes and requirements of this Chapter and may  
23 adopt forms necessary to implement this Chapter.

1 (F) Publication of Waivers Granted. The Department of the Environment and the  
2 contract awarding authorities shall maintain and post a list of all waivers granted on their  
3 Departmental Websites in a manner that can easily be accessed by the public.

4 (G) If no Sensitive Uses are determined to be within 1,000 feet of the construction  
5 site and/or the project requires a limited amount of Off-Road Equipment for a limited duration, such  
6 as projects exempt from the requirements of Department of Building Inspection's Green Building Code,  
7 then the Director may issue a waiver to the Contractor or City Department carrying out Construction  
8 Activities that specifies that the project is not required to comply with the Clean Construction  
9 requirements of this Section. If the project is changed during the course of construction and results in  
10 the use of Off-Road Equipment for an extended duration (i.e., twenty (20) or more days in total), then  
11 the Contractor or City Department will be required to immediately comply with this Section.

12 (4) Clean Construction Projects encouraged for other City Contracts. In recognition of  
13 the health and other environmental benefits of Clean Construction, contract-awarding  
14 authorities are encouraged to require contractors to meet the standards for Clean  
15 Construction, as appropriate, in contracts not otherwise covered by this Chapter.

16 (5) Penalty.

17 (A) Whenever any City department finds, after an investigation by the contract  
18 awarding authority and the City Attorney, that a person or entity being considered for a  
19 contract, or under contract, with the City has, in connection with the bidding, execution or  
20 performance of any City contract, falsely represented to the City the nature or character of the  
21 off-road vehicles and/or off-road engines to be utilized, or utilized, on the contract, the City  
22 department shall have the authority to impose such sanctions or take such other actions as  
23 are designed to ensure compliance with the provisions of this Chapter.

1 (B) Measures which are available to the City to enforce this Chapter upon  
2 finding a violation pursuant to Section 6.25(~~(c)~~~~(b)~~~~(5)~~~~(A)~~) include, but are not limited to the  
3 following:

4 (i) Refusal to certify the award of a contract;

5 (ii) Suspension of a contract;

6 (iii) Ordering the withholding of City funds due the contractor under any City  
7 contract;

8 (iv) Ordering the recession of a contract based upon a material breach of  
9 contract provisions or pertaining to representations made in bidding, execution or  
10 performance of the contract;

11 (v) Debarment of a bidder, proposer or contractor from eligibility for providing  
12 commodities or services to the City for a period not to exceed five years, with a right to review  
13 and reconsideration by the City upon a showing of corrective action indicating violations are  
14 not likely to reoccur.

15 (C) Nothing in this Chapter shall be construed to relieve a contractor of  
16 responsibility to perform the contract.

17  
18 Section 3. The Administrative Code is hereby amended by revising Section 6.67 to  
19 read as follows:

20 **SEC. 6.67. COMPARISON OF BIDS ON THE BASIS OF CLEAN CONSTRUCTION.**

21 To minimize the adverse impact to the surrounding environment, Department heads  
22 authorized to execute contracts for public works are authorized to compare bids on the basis  
23 that the work will be performed utilizing off-road equipment and off-road engines that meet or  
24 exceed the standards for Clean Construction set forth in Section 6.25 (“Clean Construction  
25 Comparative Bidding”). Department heads are particularly encouraged to utilize Clean

1 Construction Comparative Bidding wherever the construction site project is located within 500  
2 feet of a Sensitive Use Site or located within an Air Pollutant Exposure Zone, as those terms are  
3 defined in Article 38 of the Health Code, and the construction activity will occur for more than 20  
4 days. The Department head or officer calling for bids shall specify in the Advertisement for  
5 Bids the monetary value that the Department will attribute to Clean Construction and shall  
6 evaluate responsive bids accordingly. Any contract awarded in consideration, in whole or in  
7 part, on the basis of Clean Construction ~~Comparative Bidding~~ shall include provisions (1)  
8 requiring the contractor to certify that all work has been undertaken in compliance with the  
9 requirements for Clean Construction set forth in Section 6.25, (2) providing procedures to  
10 request a waiver of the ~~biodiesel fuel and/or emissions~~ standards as to specific, necessary  
11 equipment ~~as set forth in Section 6.2(b)(3)(D),~~ and (3) providing for liquidated damages in the  
12 amount of \$100.00 per day per vehicle operated at the project site in violation of Clean  
13 Construction standards. Except as provided herein, contracts awarded on the basis of Clean  
14 Construction ~~Comparative Bidding~~ shall be subject to all provisions of Chapter 6 of the  
15 Administrative Code.

16  
17 Section 4. The Environment Code is hereby amended by revising Section 426 to read  
18 as follows:

19 **SEC. 426. CLEAN CONSTRUCTION ASSISTANCE AND REPORTING.**

20 (a) Definitions:

21 (1) —“Most effective VDECS, verified diesel emission control strategy” means a device,  
22 ~~system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code~~  
23 ~~of Regulations to achieve the highest level of pollution control from an off-road vehicle. as defined in~~  
24 Administrative Code Section 6.25(b).

1           (2)——“Off-road engine<sub>2</sub>” ~~means a diesel internal combustion engine (including the fuel~~  
2 ~~system) including without limitation, internal combustion engines used to power excavators, backhoes,~~  
3 ~~bulldozers or similar equipment used in any City construction projects. “Off road engine” does not~~  
4 ~~include portable engines or stationary engines (engines that remain at one location for more than 12~~  
5 ~~months).~~ as defined in Administrative Code Section 6.25(b).

6           (3)——“Off-road equipment vehicle<sub>2</sub>” ~~means a vehicle that is propelled by an off-road engine of~~  
7 ~~twenty-five (25) horsepower or greater, including, without limitation, excavators, backhoes, bulldozers~~  
8 ~~and similar equipment used in any project subject to this Chapter. “Off road vehicle” does not include~~  
9 ~~a horticultural maintenance vehicle used for landscaping purposes that is powered by an off-road~~  
10 ~~engine of sixty-five (65) horsepower or less and that is not used in any construction program or project.~~  
11 ~~“Off-road vehicle” does not include portable equipment.~~ as defined in Administrative Code Section  
12 6.25(b).

13           (4)——“Tier 2 Off-Road Emission Standards<sub>2</sub>” ~~are those standards for an off-road engine as~~  
14 ~~described in Division 3, Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code~~  
15 ~~of Regulations, as amended.~~ as defined in Administrative Code Section 6.25(b).

16           (b) Technical Assistance to Local Businesses. The Department of the Environment  
17 shall provide technical assistance to businesses certified as Local Businesses Enterprises  
18 (LBEs) by the Human Rights Commission and other local businesses in securing available  
19 local, State and Federal public incentive funding to retro-fit, repower or replace off-road  
20 equipment vehicles or off-road engines operated by such businesses within the City.

21           (c) Annual Reporting Requirement. The Department of the Environment annually shall  
22 prepare and distribute to City departments with off-road equipment vehicles or off-road engines  
23 summary information, including application procedures and deadlines, about available local,  
24 State and Federal public incentive programs to retrofit, re-power, or replace older, more  
25 polluting diesel off-road equipment. The Department of the Environment, in consultation with the

1 Office of the City Administrator, shall include in the Annual Report to the Mayor and the Board  
2 of Supervisors, required in Section 414-412, the following:

3 (1) information supplied to the Department of the Environment by City Departments  
4 about the extent to which each City Department's off-road equipment ~~vehicle~~ and off-road  
5 engine fleet meets or exceeds either Tier 2 off-road emission standards for off-road engines or  
6 utilizes the most effective VDECS ~~verified diesel emission control strategy~~,

7 (2) a summary of the results of grant applications made and awarded for the prior  
8 year to retro-fit, repower or replace off-road equipment ~~vehicles~~ and engines in the City's fleet,  
9 including fleet upgrades funded and completed,

10 (3) a summary of technical assistance provided to LBEs and other local businesses,  
11 and results, if known, and

12 (4) recommendations to the Board of Supervisors, Mayor, and City Departments for  
13 procedural, policy, or legislative changes to reduce air pollution emanating from off-road  
14 equipment ~~vehicles~~ and off-road engines.

15  
16 Section 5. Effective Date. This ordinance shall become effective 30 days after  
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
19 of Supervisors overrides the Mayor's veto of the ordinance.

20  
21 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the  
24 Administrative and Environment Codes that are explicitly shown in this ordinance as additions,  
25

1 deletions, Board amendment additions, and Board amendment deletions in accordance with  
2 the “Note” that appears under the official title of the ordinance.

3

4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By: \_\_\_\_\_  
7 ANDREA RUIZ-ESQUIDE  
8 Deputy City Attorney

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