

1 [Clean Construction Ordinance.]

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3 **Ordinance amending the Administrative Code to add Section 6.25 to require City**
4 **Contractors to adopt clean construction practices including biodiesel fuel and**
5 **emissions controls within one year; amending the Administrative Code to add Section**
6 **6.67 to allow City departments that are authorized to award public works contracts to**
7 **compare bids on the basis of clean construction practices; and amending the**
8 **Environment Code to authorize the Department of the Environment to assist local**
9 **businesses in applying for such funding, and to require annual reporting; and making**
10 **findings, including environmental findings.**

11 Note: Additions are *single-underline italics Times New Roman*;
12 deletions are *strikethrough italics Times New Roman*.
13 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. Findings.

16 (a) Air pollution is one of the major public health threats in San Francisco and
17 contributes to asthma and other respiratory diseases.

18 (b) Diesel engine emissions from off-road heavy-duty vehicles include fine
19 particulate matter that can be breathed deeply into the lungs and enter into a person’s blood
20 system. The State Air Resources Board classifies diesel particulate emissions as a toxic air
21 contaminant and estimates that these emissions account for 70 percent of the cancer risks
22 associated with airborne toxins.

23 (c) The City and County of San Francisco has an interest in the protection of public
24 health and the reduction of exposure to diesel emissions generated at publicly funded
25 construction sites.

1 (d) The City and County of San Francisco can reduce the exposure to diesel
2 emissions from off-road diesel equipment by requiring City contractors undertaking public
3 works projects near schools, hospitals, residential care facilities and similar sensitive areas to
4 utilize off-road diesel equipment with lower emissions.

5 (e) The City and County of San Francisco can further reduce the exposure to diesel
6 emissions from off-road diesel equipment by creating a bidding incentive for City Contractors
7 to utilize the cleanest possible off-road diesel equipment on public works contracts.

8 (f) The City and County of San Francisco can reduce the exposure to diesel
9 emissions from off-road diesel vehicle fleets by seeking funding to retro-fit City owned
10 equipment and other off-road diesel equipment operated in the City from existing incentive
11 programs such as the Carl Moyer Air Quality Standards Attainment Program.

12 (g) Biodiesel is an available energy source that can be substituted in many diesel
13 engines for conventional diesel fuel. Biodiesel can reduce petroleum consumption; and
14 significantly reduce emissions of particulate matter, carbon monoxide, hydrocarbons, carbon
15 dioxide ("greenhouse gas") and toxic air pollutants

16 (h) Under this Ordinance, the City and County of San Francisco wishes to exercise
17 its power to make economic decisions involving its own funds as a participant in the
18 marketplace and to conduct its own business as a municipal corporation to ensure that
19 purchases and expenditures of public monies are made in a manner consistent with Clean
20 Construction practices.

21 (i) Nothing in this Ordinance shall be interpreted or applied so as to create any
22 power or duty in conflict with any federal or state law.

23 Section 2. The San Francisco Administrative Code is hereby amended by adding
24 Section 6.25 to read as follows:

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1 **SEC. 6.25. CLEAN CONSTRUCTION.**

2 (a) Definitions:

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

6 (2) "Clean Construction Project" means performing all work required to be performed
7 under a public works contract (1) utilizing only off-road equipment and off-road engines fueled by
8 biodiesel fuel grade B20 or higher and (2) utilizing only high use equipment that either (a) meets or
9 exceed Tier 2 standards for off-road engines or (b) operates with the most effective verified diesel
10 emission control strategy.

11 (3) "High Use Vehicles" means off-road vehicles or off-road engines used an aggregate of
12 20 or more hours during any portion of the project.

13 (4) "Major construction project" means a public work or improvement estimated to require
14 twenty (20) or more cumulative days of work to complete.

15 (5) "Most effective verified diesel emission control strategy" means a device, system or
16 strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of
17 Regulations to achieve the highest level of pollution control from an off-road vehicle.

18 (6) "Off-road engine" means a diesel internal combustion engine (including the fuel system)
19 including without limitation, internal combustion engines used to power excavators, backhoes,
20 bulldozers or similar equipment used in any project subject to this Chapter. "Off-road engine" does
21 not include portable engines or stationary engines (engines that remain at one location for more than
22 12 months).

23 (7) "Off-road vehicle" means a vehicle that is propelled by an off-road engine of twenty-five
24 horsepower or greater, including, without limitation, excavators, backhoes, bulldozers and similar

1 equipment used in any project subject to this Chapter. "Off-road vehicle" does not include a
2 horticultural maintenance vehicle used for landscaping purposes that is powered by an off-road engine
3 of sixty-five horsepower or less and that is not used in any construction program or project. "Off-road
4 vehicle" does not include portable equipment.

5 (8) "Sensitive Site" means a hospital or other medical institution with facilities for inpatient
6 care, a residential care facility providing lodging board and acre for a period of 24 hours or more to
7 seven or more persons, a child-care facility providing less than 24 hour care for 13 or more children,
8 or an elementary or secondary school, either public or private.

9 (9) "Tier 2 Standards" are those standards for an off-road engine as described in Division
10 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as
11 amended.

12 (b) Clean Construction on major construction projects.

13 (1) Requirement. For all contracts for a major construction project located within 500 feet
14 of a sensitive site solicited on or after a date one year from the effective date of this Ordinance, the
15 department head or officer calling for bids shall specify in the Advertisement for Bids that Clean
16 Construction is required for the performance of all work, unless the contract awarding department,
17 upon consultation with the Department of the Environment or for good cause shown, waives such
18 requirement for biodiesel fuel and/or emissions standards in advance as to specific, necessary
19 equipment.

20 (2) Contract Provisions and liquidated damages. Every contract for such public work or
21 improvement shall contain a provision requiring Clean Construction and the procedure for seeking
22 waiver in advance by the Department head, and providing for liquidated damages in the amount of
23 \$100 per day per vehicle operated in violation of this requirement.

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1 (3) Waivers. The contract awarding department, upon consultation with the Department of
2 the Environment or for good cause shown, may waive the requirement for biodiesel fuel and/or
3 emissions standards as to specific, necessary equipment provided that such waiver is issued in advance
4 of any violation of the Clean Construction and provided further that all such waivers for a specific
5 project may not exceed 25% of the total operating hours of all off-road vehicles or off-road equipment
6 used on the project.

7 (4) Clean Construction Projects encouraged in other City Contracts. In recognition of the
8 health and other environmental benefits of Clean Construction, contract-awarding departments are
9 encouraged to require contractors to meet the standards for Clean Construction projects, as
10 appropriate, in contracts for public works and improvements not otherwise covered by this ordinance.

11 Section 3. The San Francisco Administrative Code is hereby amended by adding
12 Section 6.67 to read as follows:

13 **SEC. 6.67. COMPARISON OF BIDS ON BASIS OF CLEAN CONSTRUCTION.**

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15 To minimize the adverse impact to the surrounding environment, department heads authorized to
16 execute contracts for public works are authorized to compare bids on the basis that the work will be
17 performed utilizing off-road equipment and off-road engines that meet or exceed the standards for
18 Clean Construction projects set forth in Section 6.25 ("Clean Construction comparative bidding").
19 Department heads are particularly encouraged to utilize "Clean Construction" comparative bidding
20 wherever the project is located within 500 feet of a sensitive site and the construction activity will occur
21 for more than 20 days. The department head or officer calling for bids shall specify in the
22 Advertisement for Bids the monetary value that the department will attribute to Clean Construction and
23 shall evaluate responsive bids accordingly. Any contract awarded in consideration, in whole or in
24 part, on the basis of Clean Construction comparative bidding shall include provisions (1) requiring the
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1 contractor to certify that all work has been undertaken in compliance with the requirements for Clean
2 Construction set forth in Section 6.25, (2) providing procedures for the contract awarding department,
3 upon consultation with the Department of the Environment or for good cause shown, to waive the
4 requirement for biodiesel fuel and/or emissions standards as to specific, necessary equipment provided
5 that such waiver is issued in advance of any violation of the Clean Construction standards and
6 provided further that such waivers may not exceed 25% of the total operating hours of all off-road
7 vehicles or off-road equipment used on the project, and (3) providing for liquidated damages in the
8 amount of \$100 per day per vehicle operated at the project site in violation of Clean Construction
9 standards. Except as provided herein, contracts awarded on the basis of "Clean Construction"
10 comparative bidding shall be subject to all provisions of Chapter 6 of the Administrative Code.

11 Section 4. The San Francisco Environment Code is hereby amended by adding
12 Section 411 to read as follows:

13 **SEC. 411. CLEAN CONSTRUCTION ASSISTANCE AND REPORTING.**

14 (a) Definitions:

15 (1) "Most effective verified diesel emission control strategy" means a device, system or
16 strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of
17 Regulations to achieve the highest level of pollution control from an off-road vehicle.

18 (2) "Off-road engine" means a diesel internal combustion engine (including the fuel system)
19 including without limitation, internal combustion engines used to power excavators, backhoes,
20 bulldozers or similar equipment used in any City construction projects. "Off-road engine" does not
21 include portable engines or stationary engines (engines that remain at one location for more than 12
22 months).

23 (3) "Off-road vehicle" means a vehicle that is propelled by an off-road engine of twenty-five
24 horsepower or greater, including, without limitation, excavators, backhoes, bulldozers and similar

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1 equipment used in any project subject to this Chapter. "Off-road vehicle" does not include a
2 horticultural maintenance vehicle used for landscaping purposes that is powered by an off-road engine
3 of sixty-five horsepower or less and that is not used in any construction program or project. "Off-road
4 vehicle" does not include portable equipment.

5 (4) "Tier 2 standards" are those standards for an off-road engine as described in Division 3
6 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as
7 amended.

8 (b) Technical Assistance to Departments and Local Businesses. The Department of the
9 Environment annually shall prepare and distribute to City departments with off-road vehicles or off-
10 road engines summary information, including application procedures and deadlines, about available
11 local, state and federal public incentive programs to retrofit, repower, or replace older, more polluting
12 diesel equipment. The Department of the Environment shall also provide technical assistance to
13 businesses certified as Local Businesses Enterprises (LBEs) by the Human Rights Commission and
14 other local businesses in securing funding to retro-fit, repower or replace off-road vehicles or off-road
15 engines operated by such businesses within the City.

16 (c) Annual Reporting Requirement. The Department of the Environment shall include in the
17 Annual Report to the Mayor and the Board of Supervisors, required in Section 406(j), the following: (1)
18 information about the extent to which each City Department's off-road vehicle and off-road engine fleet
19 meets or exceeds either Tier 2 standards for off-road engines or utilizes the most effective verified
20 diesel emission control strategy, (2) a summary of the results of grant applications made and awarded
21 for the prior year to retro-fit, repower or replace off-road vehicles and engines in the City's fleet,
22 including fleet upgrades funded and completed, (3) a summary of technical assistance provided to
23 LBEs and other local businesses, and results, if known, and (4) recommendations to the Board of

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1 Supervisors, Mayor, and City Departments for procedural, policy, or legislative changes to reduce air
2 pollution emanating from off road vehicles and off-road engines.

3 Section 5. Environmental Findings.

4 The Planning Department has determined that the actions contemplated in this
5 Ordinance are in compliance with the California Environmental Quality Act (California Public
6 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
7 Board of Supervisors in File No. _____ and is incorporated herein by reference.

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9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: _____
12 CATHARINE S. BARNES
13 Deputy City Attorney
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