

[Environment, Administrative Codes - Clean Construction Ordinance]

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Ordinance amending the Environment Code to require a Construction Emissions Minimization Plan and monitoring for certain public works projects within an Air Pollutant Exposure Zone and to require controls on emission-producing equipment used for public works projects outside of such zones; amending the Administrative Code to incorporate these requirements in construction contracts where applicable; and making environmental findings.

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

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

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 140805 and is incorporated herein by reference.

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1 Section 2. The Environment Code is hereby amended by adding Chapter 25,
2 Sections 25.1 through 25.10, and including revising and renumbering existing Section 426 as
3 Section 25.9, to read as follows:
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5 **CHAPTER 25: CLEAN CONSTRUCTION REQUIREMENTS FOR PUBLIC WORKS**

6 Section 25.1. Findings.

7 Section 25.2. Title and Purpose.

8 Section 25.3. Definitions.

9 Section 25.4. Clean Construction Requirements.

10 Section 25.5. Requirements Within Air Pollutant Exposure Zones.

11 Section 25.6. Requirements Outside of Air Pollutant Exposure Zones.

12 Section 25.7. Waivers.

13 Section 25.8. Regulations.

14 Section 25.9. Assistance and Reporting.

15 Section 25.10. Enforcement.
16

17 **SEC. 25.1. FINDINGS.**

18 (a) Scientific studies have found an association between exposure to particulate matter and
19 significant human health problems, including: aggravated asthma; chronic bronchitis; reduced lung
20 function; irregular heartbeat; heart attack; and premature death in people with heart or lung disease.
21 Exposure to air pollutants that are carcinogens has significant human health consequences as well.
22 For example, exposure to diesel exhaust is an established cause of lung cancer.

23 (b) One in three Americans has heart or blood vessel disease; heart disease and stroke are the
24 first and fourth leading causes of death in the U.S., respectively. Air pollution affects heart health and
25 can trigger heart attacks and strokes. Exposure to air pollutants contributes to most of the leading

1 causes of death for San Franciscans: ischemic heart disease; lung, bronchus and tracheal cancers;
2 cerebrovascular disease; chronic obstructive pulmonary disease; hypertensive heart disease and lower
3 respiratory infection. Short-term effects of exposure to air pollution include constriction or chest
4 tightening that causes discomfort or limits normal activity and that makes exercise difficult. And long-
5 term changes in lung function may include lung tissue inflammation, leading to chronic lung disease.

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

13 (d) Proximity to sources of air pollution increases exposure and proximity to sources is more
14 common for the poor and for certain ethnic minorities.

15 (e) Consequently, health vulnerability varies among neighborhoods and populations within San
16 Francisco, as measured by population health records of air pollution-associated hospital discharges
17 and emergency room visits, and non-accident mortality. Health vulnerable populations are likely to
18 have more significant health consequences from air pollutant exposure compared to populations that
19 are less vulnerable.

20 (f) Construction activities can be a significant source of diesel exhaust emissions. When such
21 emissions are not controlled, they can become a nuisance and public health risk.

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

24 (h) The City and County of San Francisco ("the City") has an interest in protecting public
25 health by reducing diesel exhaust emissions from publicly funded construction sites.

1 (i) The City can reduce exhaust emissions from off-road diesel equipment by requiring City
2 contractors on public works projects within an Air Pollutant Exposure Zone, as defined in the Health
3 Code, to use equipment with lower exhaust emissions and to reduce exhaust emissions through a
4 construction emissions minimization plan.

5 (j) The use of newer technologies, such as verified diesel emission control strategies, combined
6 with newer engines (Tier 2 or later), can reduce particulate matter emissions from construction
7 equipment between 89 and 94 percent compared to older, dirtier equipment.

8 (k) It is feasible to require City contractors to use these newer technologies and newer engines
9 in limited areas within San Francisco based on the wide availability of newer technologies and the
10 availability of newer engines across all sizes of fleets, equipment types, and sizes of engines, as shown
11 by California Air Resources Board inventories. Furthermore, both the state and federal governments
12 have adopted regulations, such as the California Air Resources Board's In-Use Off-Road Diesel
13 Vehicle Regulation, that will require newer, cleaner equipment as the useful life of older engines
14 expires and the engines become obsolete.

15 (l) The City can further reduce the exposure to diesel emissions from off-road diesel equipment
16 by creating and implementing bidding incentives for City contractors to utilize the cleanest possible
17 off-road diesel equipment on public works projects.

18 (m) The City can also reduce the exposure to diesel emissions from off-road diesel vehicle
19 fleets by seeking funding to retro-fit City owned equipment and other off-road diesel equipment
20 operated in the City. Existing funding sources include incentive programs such as the Carl Moyer Air
21 Quality Standards Attainment Program.

22 (n) By adopting this Chapter 25, the City intends to exercise its power to make economic
23 decisions involving its own funds as a participant in the marketplace and to conduct its own business as
24 a municipal corporation to ensure that purchases and expenditures of public monies are made in a
25 manner consistent with clean construction practices.

1 (o) Nothing in this Chapter 25 shall be interpreted or applied so as to create any power or duty
2 in conflict with any federal or state law.

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4 **SEC. 25.2. TITLE AND PURPOSE.**

5 This Chapter 25 may be referred to as the “San Francisco Clean Construction Ordinance.”
6 This Chapter is intended to protect the public health, safety and welfare by requiring contractors on
7 City public works projects to reduce diesel and other particulate matter emissions generated by
8 constructions activities.

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10 **SEC. 25.3. DEFINITIONS.**

11 For purposes of this Chapter 25, the following definitions shall apply. Where a federal, State,
12 or City law is cross-referenced as part of a definition, it is intended that the cross-reference include
13 future amendments to the cross-referenced provision.

14 “Air Pollutant Exposure Zone” means a zone having a substantially greater than average
15 concentration of air pollutants as defined in Health Code Section 3804.

16 “Alternative Fuels” means any transportation fuel that is less polluting than gasoline or
17 petroleum diesel fuel, as determined by the California Air Resource Board and that is shown to have
18 lower lifecycle carbon emissions than gasoline or petroleum diesel. Alternative Fuels may include, but
19 are not limited to: natural gas; propane; biofuels from low carbon, sustainable and preferably local
20 sources; hydrogen produced from low carbon and/or renewable sources; and electricity.

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

23 “ARB” means the California Air Resources Board.

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

1 “Clean Construction” means the performance of all work required to be performed under a
2 Public Works contract meeting the requirements in Sections 25.4, 25.5 and 25.6, as applicable.

3 “Construction” means building, demolition, excavation, grading or foundation work, whether
4 or not the work requires a City permit. “Construction” does not include the issuance or obtaining of a
5 site permit for a project.

6 “Construction Activities” means the performance of all work involved in or required for
7 Construction.

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

12 “Contractor” means a party who contracts directly with the City to perform construction
13 services relevant to a Public Work or improvement. “Contractor” also includes a City department
14 when the department itself performs construction services relevant to a Public Work or improvement.

15 “Department Head” means the general manager, director, or executive director of a City
16 department authorized to perform Public Works, or that person’s designee.

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

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

23 “Major Construction Project” means a public work to be performed within the geographic
24 limits of the City that uses off-road equipment and that is estimated to require 20 or more cumulative
25 days of work, including non-consecutive days, to complete.

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

4 “Off-Road Engine” means a non-road engine as defined in Title 40 of the Code of Federal
5 Regulations, Section 89.2

6 “Off-Road Equipment” means equipment with an off-road engine having greater than 25
7 horsepower and operating for more than 20 total hours over the entire duration of Construction
8 Activities.

9 “On-Road Equipment” means a heavy-duty vehicle as defined in Title 40 of the Code of Federal
10 Regulations, Section 86.1803-01.

11 “Portable Diesel Engine” means a diesel engine that is portable as defined in 71 California
12 Code of Regulations, Section 93116.2(bb).

13 “Public Work” means a contract for the erection, construction, renovation, alteration,
14 improvement, demolition, excavation, installation, or repair of any public building, structure,
15 infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility that is performed
16 by or for the City, and the cost of which is to be paid wholly or partially out of moneys deposited in the
17 City Treasury or out of trust monies under the control of or collected by the City.

18 “Sensitive Use” means a category of building use identified as a “Sensitive Use” in Health
19 Code Section 3804.

20 “Tier 2 Off-Road Emission Standards” means the Tier 2 new engine emission standards in Title
21 13, California Code of Regulations, Section 2423(b)(1)(A) and/or Title 40, Code of Federal
22 Regulations, Part 89.112(a).

23 “VDECS” means a verified diesel emission control strategy, designed primarily for the
24 reduction of diesel particulate matter emissions, which has been verified by ARB pursuant to
25 “Verification Procedures, Warranty and In-Use Strategies to Control Emissions from Diesel Engines,”

1 Title 13, California Code of Regulations, Sections 2700-2710. VDECS can be verified to achieve Level
2 1 diesel particulate matter reductions (at least 25 percent), Level 2 diesel particulate matter reductions
3 (at least 50 percent), or Level 3 diesel particulate matter reductions (at least 85 percent).

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5 **SEC. 25.4. CLEAN CONSTRUCTION REQUIREMENTS.**

6 (a) All work performed on a Major Construction Project shall be carried out in compliance
7 with the requirements of this Chapter 25. All calls for bids for contracts for work to be performed on a
8 Major Construction Project shall contain the provisions required in Administrative Code Section 6.25.

9 (b) Notwithstanding Subsection (a), work performed on a Major Construction Project is not
10 subject to the requirements of this Chapter 25 if there are no Sensitive Uses within 1,000 feet of any
11 portion of the construction site and/or the project requires a limited amount of Off-Road Equipment
12 for a limited duration, such as projects exempt from the requirements of the Department of Building
13 Inspection's Green Building Code. If the project is changed during the course of construction and
14 results in the use of Off-Road Equipment for 20 or more days in total, then the Contractor must
15 immediately comply with this Chapter 25.

16 (c) Contract-awarding authorities are encouraged to require contractors to meet the standards
17 for Clean Construction, as appropriate, in contracts not otherwise covered by this Chapter.

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19 **SEC. 25.5. REQUIREMENTS WITHIN AIR POLLUTANT EXPOSURE ZONES.**

20 (a) Requirements. For all work performed on a Major Construction Project located in an Air
21 Pollutant Exposure Zone:

22 (1) All off-road equipment shall have engines that (A) meet or exceed either United
23 States Environmental Protection Agency or ARB Tier 2 off-road emission standards, and (B) have been
24 retrofitted with an ARB Level 3 VDECS. Equipment with engines meeting Tier 4 Interim or Tier 4
25 Final off-road emission standards automatically meet this requirement;

1 (2) Where access to alternative sources of power is available, use of portable diesel
2 engines to perform work on the project shall be prohibited;

3 (3) Diesel engines, whether for off-road or on-road equipment, shall not be left idling
4 for more than two minutes at any location, except as allowed for in applicable state regulations
5 regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating
6 conditions). The Contractor shall post legible and visible signs, in English, Spanish, and Chinese, in
7 designated queuing areas and at the construction site to remind operators of the idling limit; and

8 (4) The Contractor shall instruct construction workers and equipment operators on the
9 maintenance and tuning of construction equipment, and require that such workers and operators
10 properly maintain and tune equipment in accordance with manufacturer specifications.

11 **(b) Waivers.**

12 (1) The Department Head may waive the alternative source of power requirement of
13 Subsection (a)(2) if an alternative source of power is limited or infeasible at the project site. If the
14 Department Head grants the waiver, the Contractor must submit documentation that the equipment
15 used for onsite power generation meets the requirements of Subsection (a)(1).

16 (2) The Department Head may waive the equipment requirements of Subsection (a)(1)
17 if: a particular piece of off-road equipment with an ARB Level 3 VDECS is technically not feasible; the
18 equipment would not produce desired emissions reduction due to expected operating modes;
19 installation of the equipment would create a safety hazard or impaired visibility for the operator; or,
20 there is a compelling emergency need to use off-road equipment that is not retrofitted with an ARB
21 Level 3 VDECS. If the Department Head grants the waiver, the Contractor must use the next cleanest
22 piece of off-road equipment, according to Table 25.5.1, below.

1 Table 25.5.1

2 Off-Road Equipment Compliance Step down schedule*

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<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>

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9 * If Department Head determines that the equipment requirements cannot be met, the Contractor must meet Compliance Alternative 1. If the Department Head determines that the Contractor cannot supply off-road equipment meeting Compliance Alternative 1, then the Contractor must meet Compliance Alternative 2. If the Department Head determines that the Contractor cannot supply off-road equipment meeting Compliance Alternative 2, then the Contractor must meet Compliance Alternative 3.

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16 ** Alternative fuels are not a VDECS

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18 (c) Construction Emissions Minimization Plan. Before starting on-site Construction Activities, the Contractor shall submit a Construction Emissions Minimization Plan (“Emissions Plan”) to the Department Head for review and approval. The Emissions Plan shall state, in reasonable detail, how the Contractor will meet the requirements of this Section 25.5.

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22 (1) The Emissions Plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for each Construction Phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial

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1 number, and expected fuel usage and hours of operation. For the VDECS installed, the description
2 may include, but is not limited to: technology type, serial number, make, model, manufacturer, ARB
3 verification number level, and installation date and hour meter reading on installation date. For off-
4 road equipment using alternative fuels, the description shall also specify the type of alternative fuel
5 used.

6 (2) The Department Head shall ensure that all applicable requirements of the
7 Construction Emissions Minimization Plan have been incorporated into the contract specifications.
8 The contract shall include a statement that the Contractor agrees to comply fully with the Emissions
9 Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material
10 breach of the contract.

11 (3) The Contractor shall make the Emissions Plan available to the public for review on-
12 site during working hours. The Contractor shall post at the construction site a legible and visible sign
13 summarizing the Construction Emissions Minimization Plan. The sign shall also state that the public
14 may ask to inspect the Emissions Plan for the project at any time during working hours, and shall
15 explain how to request to inspect the Emissions Plan. The Department Head shall review and approve
16 the sign before the Contractor posts it. The Contractor shall post at least one copy of the sign in a
17 visible location on each side of the construction site facing a public right-of-way.

18 (d) **Monitoring.** After the start of Construction Activities, the Contractor shall maintain
19 quarterly reports at the construction site documenting compliance with the Construction Emissions
20 Minimization Plan. After the completion of Construction Activities and prior to receiving a final
21 certificate of acceptance, or within six month of completion of Construction Activities if a final
22 certificate of acceptance is not required, the Contractor shall submit to the Department Head a final
23 report summarizing Construction Activities, including the start and end dates and duration of each
24 Construction Phase, and the specific information required in the Emissions Plan.

1 **SEC. 25.6. REQUIREMENTS OUTSIDE OF AIR POLLUTANT EXPOSURE ZONES.**

2 For public works projects located outside Air Pollutant Exposure Zones, the Contractor shall
3 utilize only off-road equipment and off-road engines fueled by biodiesel fuel grade B20 or higher and
4 utilize only off-road equipment that either: (a) meets or exceeds Tier 2 standards for off-road engines,
5 or (b) operates with the most effective VDECS.

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7 **SEC. 25.7. WAIVERS.**

8 (a) **Emergency.** A Department Head may waive the requirements of this Chapter 25, in whole
9 or in part, prior to the Controller's certification of the contract, where the contract is to be awarded
10 under the emergency provisions of Administrative Code Section 6.60 and there is no immediately
11 available contractor capable of performing the work in compliance with this Chapter 25.

12 (b) **Performance Standards.** A Department Head may waive the requirements of this
13 Chapter 25, in whole or in part, prior to the solicitation of bids, where there are no complying off-road
14 vehicles or off-road engines for some or all of the required work.

15 (c) **Cost Prohibitive.** A Department Head may waive the requirements of this Chapter 25, in
16 whole or in part, prior to the solicitation of bids, where compliance would be cost prohibitive under the
17 circumstances.

18 (d) **Other.** If for any other reason strict compliance with the requirements of this Chapter 25 is
19 impractical or infeasible, the Department Head may waive the requirements, in whole or part, as to
20 specific off-road equipment or off-road engines essential to complete the project, provided that such
21 waivers for specific equipment or engines do not cumulatively exceed 25% of the total operating hours
22 of all off-road equipment or off-road engines used on the project.

23 (e) **Notices and Supporting Memoranda.** For any waiver granted under this Section 25.7, the
24 Department Head shall within two business days prepare a written notice of the waiver and a written
25 memorandum explaining the basis for the waiver and the steps that will be taken to safeguard public

1 and City employee health during the noncomplying work. For waivers granted under Subsection (a),
2 the memorandum shall also state the steps that the Department Head and the Contractor will take to
3 reduce the likelihood that a similar emergency waiver will be required in the future. For waivers
4 granted under Subsection (d), the memorandum shall also state the steps that the Department Head and
5 the Contractor will take to minimize the use of noncomplying equipment or engines during the
6 noncomplying work. The Department Head shall post a list of all waivers granted on the
7 Department's website, as well as a notice that copies of the waiver notices and supporting memoranda
8 prepared under this Subsection (e) are available from the Department.

9
10 **SEC. 25.8. REGULATIONS.**

11 The Director of the Department of Public Works, in consultation with the Department of the
12 Environment and other interested City departments, may adopt rules, regulations or guidelines as
13 necessary or appropriate to carry out the purposes and requirements of this Chapter 25.

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15 **SEC. 25.9 426. CLEAN CONSTRUCTION ASSISTANCE AND REPORTING.**

16 **(a) Definitions:**

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

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

1 (3) *"Off-road vehicle" means a vehicle that is propelled by an off-road engine of twenty-*
2 *five (25) horsepower or greater, including, without limitation, excavators, backhoes, bulldozers and*
3 *similar equipment used in any project subject to this Chapter. "Off-road vehicle" does not include a*
4 *horticultural maintenance vehicle used for landscaping purposes that is powered by an off-road engine*
5 *of sixty five (65) horsepower or less and that is not used in any construction program or project. "Off-*
6 *road vehicle" does not include portable equipment.*

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

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

15 (b) ~~(e)~~ **Annual Reporting Requirement.** The Department of the Environment annually
16 shall prepare and distribute to City departments with off-road equipment ~~vehicles~~ or off-road
17 engines summary information, including application procedures and deadlines, about
18 available local, State and Federal public incentive programs to retrofit, re-power, or replace
19 older, more polluting off-road diesel equipment. The Department of the Environment shall
20 include in its ~~the Annual~~ Report to the Mayor and the Board of Supervisors, required in Section
21 412 ~~414~~, the following:

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

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

4 (3) a summary of technical assistance provided to LBEs and other local
5 businesses, and results, if known; and

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

9
10 **SEC. 25.10. ENFORCEMENT.**

11 (a) If a Department Head determines that a person or entity being considered for a contract, or
12 under contract, with the City has, in connection with the bidding, execution or performance of any City
13 contract, falsely represented to the City the nature or character of the off-road equipment and/or off-
14 road engines to be utilized, on the contract, or has falsely represented to the City the nature or
15 character of the off-road equipment and/or off-road engines actually used, the Department Head may
16 impose such sanctions or take such other actions as are appropriate to ensure compliance with the
17 provisions of this Chapter and to deter additional violations.

18 (b) Violations of this Chapter 25, or of any regulation adopted pursuant to it, shall be
19 punishable by:

20 (1) Refusal to certify the award of a contract;

21 (2) Suspension of a contract;

22 (3) Withholding City funds due the contractor under any City contract;

23 (4) Recession of the contract based upon a material breach of contract provisions or
24 pertaining to representations made in bidding, execution or performance of the contract;

1 (5) Debarment of a bidder, proposer or contractor from eligibility for providing
2 commodities or services to the City for a period not to exceed five years, with a right to review and
3 reconsideration by the City upon a showing of corrective action indicating violations are not likely to
4 reoccur; and,

5 (6) Any other remedy authorized in law or equity.

6 (c) Nothing in this Chapter 25 shall be construed to relieve a contractor of responsibility to
7 perform the contract.

8
9 Section 3. The Administrative Code is hereby amended by revising Sections 6.25 and
10 6.67, to read as follows:

11 **SEC. 6.25. CONTRACT REQUIREMENTS FOR CLEAN CONSTRUCTION.**

12 ~~(a) **Definitions:**~~

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

16 ~~(2) "City" means the City and County of San Francisco.~~

17 ~~(3) "Clean Construction" means performing all work required to be performed under a~~
18 ~~public works contract (1) utilizing only off-road equipment and off-road engines fueled by biodiesel~~
19 ~~fuel grade B20 or higher and (2) utilizing only high use equipment that either (a) meets or exceed Tier~~
20 ~~2 standards for off-road engines or (b) operates with the most effective verified diesel emission control~~
21 ~~strategy.~~

22 ~~(4) "Director" means the Director of the Department of the Environment, or his or her~~
23 ~~designee.~~

24 ~~(5) "High Use Vehicles" means off-road vehicles or off-road engines used an aggregate~~
25 ~~of 20 or more hours during any portion of the project.~~

1 ~~(6) "Major construction project" means a public work to be performed within the~~
2 ~~geographic limits of the City that is estimated to require twenty (20) or more cumulative days of work~~
3 ~~to complete.~~

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

7 ~~(8) "Off-road engine" means a diesel internal combustion engine (including the fuel~~
8 ~~system) including without limitation, internal combustion engines used to power excavators, backhoes,~~
9 ~~bulldozers or similar equipment used in any project subject to this Chapter. "Off-road engine" does~~
10 ~~not include portable engines or stationary engines (engines that remain at one location for more than~~
11 ~~12 months).~~

12 ~~(9) "Off-road vehicle" means a vehicle that is propelled by an off-road engine of twenty-~~
13 ~~five horsepower or greater, including, without limitation, excavators, backhoes, bulldozers and similar~~
14 ~~equipment used in any project subject to this Chapter. "Off-road vehicle" does not include a~~
15 ~~horticultural maintenance vehicle used for landscaping purposes that is powered by an off-road engine~~
16 ~~of sixty five horsepower or less and that is not used in any construction program or project. "Off-road~~
17 ~~vehicle" does not include portable equipment.~~

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

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

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

6 ~~(a) (b) **Clean Construction on Major Construction Projects.**~~

7 ~~(1) **Requirement.** All work performed on a Major Construction Project, as defined in~~
8 ~~Environment Code Section 25.3, shall be carried out in compliance with the Clean Construction~~
9 ~~requirements of Environment Code Chapter 25. Clean Construction shall be required for all public~~
10 ~~works contracts for major construction projects solicited on or after a date two years from the effective~~
11 ~~date of this Ordinance. For all such contracts, the The department head or officer calling for bids~~
12 ~~for contracts for work to be performed on a Major Construction Project shall specify in the~~
13 ~~Advertisement for Bids that Clean Construction is required for the performance of all work~~
14 ~~unless a waiver of all or part of the requirements of ~~that this~~ Chapter has been granted under~~
15 ~~Sections 25.5 or 25.7 Section 6.25(b)(3).~~

16 ~~(b) (2) **Contract Provisions and liquidated damages.** Every contract for work to be~~
17 ~~performed on a Major Construction Project which Clean Construction is required under Section~~
18 ~~6.25(b)(1)(A) or Section 6.25(b)(1)(B) shall contain provisions, in a form to be approved by the~~
19 ~~City Attorney: (A) requiring that the contractor comply with Chapter 25 of the Environment Code~~
20 ~~Clean Construction, (B) authorizing waivers as set forth in Environment Code Sections 25.5 and~~
21 ~~25.7 Section 6.25(b)(3), and (C) specifying liquidated damages in the amount of \$100.00 per~~
22 ~~day per each piece of off-road equipment and each off-road engine utilized to complete work~~
23 ~~on the project in violation of Environment Code Chapter 25 the Clean Construction requirements.~~

24 ~~(3) **Waivers.** Waivers from the requirements of this Chapter are available under the~~
25 ~~following circumstances:~~

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

10 (B) ~~**Performance Standards.** The Director may grant a waiver in whole or part~~
11 ~~from this Chapter prior to the solicitation of bids upon a showing by the contract awarding authority~~
12 ~~that there are no complying off-road vehicles or off-road engines for some or all of the required work,~~
13 ~~provided that the contract awarding authority provides a written memorandum explaining the need for~~
14 ~~the waiver and the steps that will be taken to safeguard public and City employee health during the~~
15 ~~noncomplying work.~~

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

21 (D) ~~**Other.** The Director may grant a waiver in whole or part from this Chapter~~
22 ~~prior to the solicitation of bids or may waive the biodiesel and/or emissions standards for Clean~~
23 ~~Construction in advance of any violation of the Clean Construction requirements as to specific off-road~~
24 ~~equipment or off-road engines essential to complete the work provided that the contract awarding~~
25 ~~authority provides a written memorandum demonstrating a reasonable basis for the waiver including a~~

1 *reasonable plan to minimize the use of noncomplying equipment or engines, and the steps that will be*
2 *taken to safeguard public and City employee health during the noncomplying work, and further*
3 *provided that such post-award waivers for specific equipment may not exceed 25% of the total*
4 *operating hours of all off-road vehicles or off-road engines used on the project.*

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

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

12 ***(4) Clean Construction Projects encouraged for other City Contracts.** In recognition*
13 *of the health and other environmental benefits of Clean Construction, contract awarding authorities*
14 *are encouraged to require contractors to meet the standards for Clean Construction, as appropriate, in*
15 *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 contract, or*
19 *under contract, with the City has, in connection with the bidding, execution or performance of any City*
20 *contract, falsely represented to the City the nature or character of the off-road vehicles and/or off-road*
21 *engines to be utilized, or utilized, on the contract, the City department shall have the authority to*
22 *impose such sanctions or take such other actions as are designed to ensure compliance with the*
23 *provisions of this Chapter.*

24 ***(B)** Measures which are available to the City to enforce this Chapter upon*
25 *finding a violation pursuant to Section 6.25 (b)(5)(A) include, but are not limited to the following:*

- 1 (i) ~~Refusal to certify the award of a contract;~~
- 2 (ii) ~~Suspension of a contract;~~
- 3 (iii) ~~Ordering the withholding of City funds due the contractor under any~~
4 ~~City contract;~~
- 5 (iv) ~~Ordering the recession of a contract based upon a material breach~~
6 ~~of contract provisions or pertaining to representations made in bidding, execution or performance of~~
7 ~~the contract;~~
- 8 (v) ~~Debarment of a bidder, proposer or contractor from eligibility for~~
9 ~~providing commodities or services to the City for a period not to exceed five years, with a right to~~
10 ~~review and reconsideration by the City upon a showing of corrective action indicating violations are~~
11 ~~not likely to reoccur.~~
- 12 (C) ~~Nothing in this Chapter shall be construed to relieve a contractor of~~
13 ~~responsibility to perform the contract.~~

14

15 **SEC. 6.67. ~~COMPARISON OF BIDS ON BASIS OF CLEAN CONSTRUCTION~~ IN BIDDING.**

16 The Clean Construction requirements of Section 6.25 and Environment Code Chapter 25 are
17 mandatory for public works to be performed within the City and estimated to require twenty (20) or
18 more days of work to complete. For other public works, department heads are encouraged to require
19 the use of off-road equipment and off-road engines that meet or exceed the standards in Chapter 25, or
20 to use bid criteria that favor the use of such equipment and/or engines. ~~To minimize the adverse impact~~
21 to the surrounding environment, Department heads authorized to execute contracts for public works
22 are authorized to compare bids on the basis that the work will be performed utilizing off-road
23 equipment and off-road engines that meet or exceed the standards for Clean Construction set forth in
24 Section 6.25 ("Clean Construction Comparative Bidding"). Department heads are particularly
25 encouraged to do so ~~utilize Clean Construction Comparative Bidding~~ wherever the project is

1 located within 500 feet of a Sensitive Site, as defined in Health Code Section 3804, ~~and the~~
2 ~~construction activity will occur for more than 20 days. The Department head or officer calling for bids~~
3 ~~shall specify in the Advertisement for Bids the monetary value that the Department will attribute to~~
4 ~~Clean Construction and shall evaluate responsive bids accordingly. Any contract awarded in~~
5 ~~consideration, in whole or in part, on the basis of Clean Construction Comparative Bidding shall~~
6 ~~include provisions (1) requiring the contractor to certify that all work has been undertaken in~~
7 ~~compliance with the requirements for Clean Construction set forth in Section 6.25, (2) providing~~
8 ~~procedures to request a waiver of the biodiesel fuel and/or emissions standards as to specific,~~
9 ~~necessary equipment as set forth in Section 6.2(b)(3)(D), and (3) providing for liquidated damages in~~
10 ~~the amount of \$100.00 per day per vehicle operated at the project site in violation of Clean~~
11 ~~Construction standards. Except as provided herein, contracts awarded on the basis of Clean~~
12 ~~Construction Comparative Bidding shall be subject to all provisions of Chapter 6 of the Administrative~~
13 ~~Code.~~

14
15 Section 3. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance. The requirements of this
19 ordinance shall become operative on January 1, 2015.

20
21 Section 4. 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 Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

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

3
4 Section 5. Undertaking for the General Welfare. In enacting and implementing this
5 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
6 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
7 is liable in money damages to any person who claims that such breach proximately caused
8 injury.

9
10 Section 6. No Conflict with Federal or State Law. Nothing in this ordinance shall be
11 interpreted or applied so as to create any requirement, power, or duty in conflict with any
12 federal or state law.

13
14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17
18 By: _____
19 ANDREA RUIZ-ESQUIDE
Deputy City Attorney

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