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Title:	Ordinance amending the City of Pittsburgh, Code of Ordinances, Title One, Administration, Article VII Procedures, Chapter 161 Contracts, Section 161.42 "Clean Construction Diesel Operations" by repealing the existing Section 161.42 and replacing it with a new Section 161.42 with the same title and purpose.		
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8/3/2016	1	Mayor	Signed by the Mayor	
7/26/2016	1	City Council	Passed Finally	Pass
7/20/2016	1	Standing Committee	AFFIRMATIVELY RECOMMENDED	Pass
7/12/2016	1	City Council	Read and referred	

Ordinance amending the City of Pittsburgh, Code of Ordinances, Title One, Administration, Article VII Procedures, Chapter 161 Contracts, Section 161.42 "Clean Construction Diesel Operations" by repealing the existing Section 161.42 and replacing it with a new Section 161.42 with the same title and purpose.

WHEREAS, in 2011, City Council enacted Ordinance 11 of 2011, effective July 27, 2011, to add a Section to the City Code entitled "Clean Construction Diesel Operations" in order to minimize human exposure and health risks from diesel particulate emissions and to reduce the health costs, missed school days, lost worker productivity and premature mortality linked to exposure to diesel particulate matter and other diesel pollutants; and

WHEREAS, the City has been working on drafting the necessary regulations and contract specifications required by this Section; and

WHEREAS, in undertaking this process and conducting additional research, the City has determined that certain changes to the Section are necessary for effective implementation.

Be it resolved that the Council of the City of Pittsburgh hereby enacts as follows:

Section 1. The City Code is hereby amended at Title One, Administrative; Article VII, Procedures; Chapter 161 Contracts; by adding a new section §161.42 entitled "Clean Construction Diesel Operations" to supersede and replace the existing §161.42.

§ 161.42 - Clean Construction Diesel Operations (“CCDO”)

161.42(a) Definitions. For purposes of this Section, the following definitions shall apply:

(1) **Authorized Partner** means an entity that enters into a written contract with the City to work with the City and/or on its behalf on a City Construction Project. For purposes of this Chapter, Authorized Partner is not meant to include another governmental entity.

(2) **Best Available Retrofit Technology (“BART”)** means technology verified by the United States Environmental Protection Agency (“US EPA”) or the California Board Resources Board (“CARB”) that achieves reductions in particulate matter emissions at the highest classification level for verified diesel emission control strategies for particulate matter (VDECS) and is applicable to a particular engine and application. Such technology shall not result in a net increase in nitrogen oxides.

(3) **City Asset** means existing City-owned or City-controlled property or property to be built by or for the City, including but not limited to a building, structure, tunnel, excavation, roadway, park, or bridge involved in a City Construction Project.

(4) **City Construction Project** means a stand-alone construction project having a total cost of Two million, five hundred thousand dollars (\$2,500,000.00) or more, involving the abatement, construction, demolition, rehabilitation, renovation, restoration, or repair of any City Asset or the preparation or close-out work pertaining to any project involving a City Asset. The term is not intended to include fixed-price, fixed-term, indefinite quantity City contracts, such as general asphalt paving or milling. The term is intended to include an otherwise eligible project involving a City Asset that is undertaken in whole or in part by an Authorized Partner pursuant to a written contract with the City.

(5) **CCDO-Covered Contract** means a contract awarded by the City or an Authorized Partner for a City Construction Project.

(6) **CCDO-Covered Contractor** means any entity or person who: 1) enters into a CCDO Covered Contract with the City; 2) enters into a CCDO Covered Contract with an Authorized Partner; or 3) enters into a contract with a prime contractor (i.e. another CCDO Covered Contractor) to perform construction work related to City Construction Project.

(7) **CCDO Waiver** means a waiver granted to CCDO Contractors to allow otherwise Covered Equipment to be excused from some or all of the requirements of this Section.

(8). **Covered Equipment** means Non-road Construction Equipment or On-road Vehicles subject to the provisions of this Section.

(9). **Non-road Construction Equipment** means a vehicle or equipment that is powered by a diesel engine fifty (50) horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, backhoes, bulldozers, compressors, cranes, excavators, generators, and similar equipment; non-road vehicles do not include locomotives or marine

vessels. Non-road Construction Equipment does not include a stationary source, except that this term shall apply to diesel-powered Stationary Generators, compressors, or similar equipment used in any City Construction Project.

(10). ***On-road Vehicle*** means a self-propelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel and that has a gross vehicle weight rating of fourteen thousand (14,000) pounds or more. For purposes of this Section, On-road Vehicle requirements shall only be applicable to concrete delivery trucks and dump trucks.

(11). ***Solicitation*** means the process used to communicate procurement requirements and to request responses from interested vendors or contractors.

(12). ***Stationary Generator*** means a non-mobile machine that uses diesel fuel to produce electrical energy.

(13). ***Ultra-low sulfur diesel fuel*** means diesel fuel that has a sulfur content of no more than fifteen (15) parts per million.

161.42(b) Applicability and Costs of Compliance.

(1) On and after October 1, 2016, all Solicitations for a City Construction Project and all CCDO Covered Contracts entered into as a result of such Solicitation shall include a requirement that all CCDO Contractors must meet the applicable requirements of subsection (c). The City will also include a requirement for compliance with subsection (c) in contracts with Authorized Partners working on City Construction Projects.

(2) All incremental equipment retrofitting and/or installation costs necessary to meet the requirements imposed pursuant to this Section 161.42 are the responsibility of the selected Covered CCDO Contractors. No additional time or monies will be granted to the Covered CCDO Contractor(s) for compliance with the requirements imposed pursuant to this Section or any Regulations or contract terms promulgated pursuant to this Section.

161.42(c) Required Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology; Waiver; Exemptions

(1) In the performance of a City Construction Project as defined herein, a CCDO Covered Contractor shall, as of October 1, 2016:

- (a) Use ultralow sulfur diesel fuel in diesel-powered Covered Equipment on the applicable project site; and
- (b) Comply with the following requirements:

- 1. Install the applicable BART as required in the current City CCDO Regulations

promulgated pursuant to subsection (e) herein; and

2. Not operate any diesel Covered Equipment on a project site unless that Covered Equipment has installed the BART that is properly maintained and operational and such compliance has first been verified by the City.

(2) A CCDO Covered Contractor may apply for a CCDO Waiver from the Department of Public Works for specified equipment or vehicles under conditions set forth in the Regulations authorized under subsection (e) herein.

(3) BART will not be required under this Section for non-Covered Equipment with engines of less than 50 horsepower; Construction Equipment used for emergency responses and/or vehicles used exclusively for snow removal; and for vehicles with engines using gasoline rather than diesel fuel as further set forth in the Regulations authorized under subsection (e) herein.

161.42(d) Compliance and Enforcement

(1) In the Regulations promulgated pursuant to subsection (e) herein, the Director of Public Works is authorized to include specific requirements for Contractor-reporting of compliance with the BART required in this Section and for on-site inspections by the City.

(2) Each Solicitation by the City for a City Construction Project subject to this Section, each CCDO Covered Contract entered into as a result of such Solicitation and each contract between the City and an Authorized Partner relating to a City Construction Project shall include provisions authorizing enforcement of the requirements of this Section.

(3) Violations of any of the requirements of this Section as inserted in the applicable contract shall be deemed to be a material breach of that contract, and the City shall have available all remedies resulting from such a breach, including but not limited to liquidated damages if set forth therein.

(4) In addition to any applicable contractual remedies for breach, any person who knowingly makes a false statement of material fact to the City with respect to compliance with any of the requirements set forth in this Section shall be subject to a fine of up to \$300.00 for each such false statement.

161.42(e) Regulations

By March 31, 2016, the Director of the Department of Public Works shall promulgate regulations implementing the provisions of this Section. These Regulations shall be posted on the City's website, made a part of all Solicitations, and incorporated into all applicable CCDO Covered Contracts and applicable contracts with Authorized Partners.

161.42(f) Annual Reporting

The City Controller shall provide City Council with an annual report that includes the number of Covered Equipment retrofitted in compliance with this Section.

161.42(g) Severability and Scope

(1) In the event any provision of this Section shall be held invalid or unenforceable in any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

(2) This Section shall not apply to any contracts to the extent that the requirements imposed by this section are inconsistent with procedures or standards required by any law or regulation of the United States or the Commonwealth of Pennsylvania to the extent such inconsistency is not permitted under the home rule powers of the City.