

No. 16-20-OR

AN ORDINANCE

An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending and supplementing the Administrative Code of Allegheny County through the creation of a new Article 914, entitled "Clean Construction" in order to protect the health, safety and well-being of the County's residents by requiring the use of environmentally responsible equipment in the course of completing certain County construction projects.

WHEREAS, transportation is the single largest source of air pollution in the United States causing nearly two-thirds of the carbon monoxide, a third of the nitrogen oxides and a quarter of the hydrocarbons in our atmosphere; and

WHEREAS, according to the Environmental Protection Agency (EPA), even though heavy-duty trucks and buses, most of which are diesel, make up only 2% of vehicles on the road, they are responsible for more than one-quarter of all ozone-forming nitrogen oxides and almost two-thirds of all particulate pollution emitted by all on-road vehicles; and

WHEREAS, research continues to demonstrate the serious health implications resulting from vehicle emissions; the EPA estimates that the air toxics emitted from cars and trucks account for half of all cancers caused by air pollution;

WHEREAS, it is the intent of the Allegheny County Council to follow the example of the EPA and 20 other states and regions in adopting a mobile vehicle idling policy to protect the health, safety and welfare of this County's residents.

The Council of the County of Allegheny hereby enacts as follows:

Section 1. Incorporation of the preamble.

The preamble to this Ordinance is hereby incorporated in its entirety herein.

Section 2. Amendment of the Administrative Code.

The Administrative Code of Allegheny County is hereby amended through the creation of a new Article 914, entitled "Clean Construction," and comprised as follows:

Article 914
Clean Construction

§5-914.01. Definitions.

The following words and phrases shall have the meanings provided herein, except when context and usage clearly indicate otherwise:

- A. Authorized Partner means an entity that enters into a written contract with Allegheny County to work with the County and/or on its behalf on a County Construction Project, as defined in Subsection D. For purposes of this Chapter, Authorized Partner is not meant to include another governmental entity.
- B. 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.
- C. County Asset means existing County-owned or County-controlled property or property to be built by or for the County, including but not limited to a building, structure, tunnel, excavation, roadway, park, or bridge involved in a County Construction Project.
- D. County 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 County Asset or the preparation or close-out work pertaining to any project involving a County Asset. The term is not intended to include fixed-price, fixed-term, indefinite quantity County contracts, such as general asphalt paving or milling. The term shall include an otherwise eligible project involving a County Asset that is undertaken in whole or in part by an Authorized Partner pursuant to a written contract with the County.
- E. Covered Contract means a contract awarded by the County or an Authorized Partner for a County Construction Project.
- F. Covered Contractor means any entity or person who: 1) enters into a Covered Contract with the County; 2) enters into a Covered Contract with an Authorized Partner; or 3) enters into a contract with a prime contractor (i.e. another Covered Contractor) to perform construction work related to County Construction Project.
- G. Waiver means a waiver granted to Contractors to allow otherwise Covered Equipment to be excused from some or all of the requirements of this Article, granted pursuant to the procedures established herein.

- H. Covered Equipment means Non-road Construction Equipment or On-road Vehicles subject to the provisions of this Article.
- I. 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 County Construction Project.
- J. 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 Article, On-road Vehicle requirements shall only be applicable to concrete delivery trucks and dump trucks.
- K. Solicitation means any process used to communicate procurement requirements and to request responses from interested vendors or contractors.
- L. Stationary Generator means a non-mobile machine that uses diesel fuel to produce electrical energy.
- M. Ultra-low sulfur diesel fuel means diesel fuel that has a sulfur content of no more than fifteen (15) parts per million.

§5-914.02. Applicability and costs of compliance.

- A. On and after January 1, 2021, any Solicitation(s) for County Construction Project(s) and all Covered Contracts entered into as a result of such Solicitation shall include a requirement that all Contractors must meet the applicable requirements of this Article. The County will also include a requirement for compliance with the terms of this Article in contracts with Authorized Partners working on County Construction Projects.
- B. All incremental equipment retrofitting and/or installation costs necessary to meet the requirements imposed pursuant to this Article shall be the responsibility of the selected Covered Contractors. No additional time or monies will be granted to the Covered Contractor(s) for compliance with the requirements imposed pursuant to this Article or any rules, regulations, policies, or contract terms promulgated pursuant to this Article.

§5-914.03. Required use of ultra low sulfur diesel fuel and best available retrofit technology; waiver; exemptions.

- A. In the performance of a County Construction Project as defined herein, a Covered

Contractor shall, as of January 1, 2021:

1. Use ultralow sulfur diesel fuel in diesel-powered Covered Equipment on the applicable project site; and
 2. Comply with the following requirements:
 - a. Install the applicable BART as required in any County Regulations promulgated pursuant to the terms of this Article; and
 - b. 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 County.
- B. A Covered Contractor may apply for a Waiver from the Department of Public Works for specified equipment or vehicles under conditions set forth in the Regulations authorized under the terms of §5-914.05 of this Article.
- C. 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 the terms of §5-914.05 of this Article.

§5-914.04. Compliance and Enforcement

- A. In the Regulations promulgated pursuant to §5-914.05 of this Article, the Director of the Department 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 County.
- B. Each Solicitation by the County for a County Construction Project subject to this Article, each Covered Contract entered into as a result of such Solicitation and each contract between the County and an Authorized Partner relating to a County Construction Project shall include provisions authorizing enforcement of the requirements of this Article.
- C. Violations of any of the requirements of this Article as inserted in the applicable contract shall be deemed to be a material breach of that contract, and the County shall have available all remedies resulting from such a breach, including but not limited to liquidated damages if set forth therein.
- D. In addition to any applicable contractual remedies for breach, any person who knowingly makes a false statement of material fact to the County with respect to compliance with any of the requirements set forth in this Article shall be subject to a fine of up to \$300.00 for each such false statement.

§5-914.05. Regulations.

No later than October 1, 2020, the Director of the Department of Public Works shall develop regulations implementing the provisions of this Article. These regulations shall be submitted to Council for approval in the form of a resolution, and shall become effective on the date of final approval of such resolution. Upon approval, the regulations promulgated pursuant to the terms of this Section shall be posted on the County's website, made a part of all Solicitations, and incorporated into all applicable Covered Contracts and applicable contracts with Authorized Partners.

§5-914.06. Annual reporting.

The County Controller shall provide County Council, the Chief Executive, and the County Manager with an annual report that includes the number of pieces of Covered Equipment retrofitted in compliance with this Section. Such report shall be provided no later than December 31 of any calendar year.

§5-914.07. Scope.

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 County.

Section 3. Effective Date.

The provisions of this Ordinance shall become effective immediately upon final approval, except as expressly otherwise noted herein.

SECTION 4. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

SECTION 5. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

PRIMARY SPONSOR: COUNCIL MEMBER PRIZIO

CO-SPONSORS: COUNCIL MEMBERS BENNETT, DUERR, BAKER, DeMARCO, FUTULES, HALLAM, KIRK, KLEIN, PALMIERE, PALMOSINA, WALTON, and ZAVARELLA, VICE PRESIDENT MACEY and PRESIDENT CATENA

Enacted in Council, this 9th day of June, 2020

Council Agenda No. 11465-20



Patrick Catena
President of Council

Attest:  _____
Jared Barker
Chief Clerk of Council

Chief Executive Office June 10th, 2020

Approved:  _____
Rich Fitzgerald
Chief Executive

Attest:  _____
Jennifer M. Grotak
Executive's Secretary
Jennifer M. Grotak
Chief of Staff